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## [McCleary Record on Appeal, Part 6] 07-2-02323-2-172 Part 6

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## I. INTRODUCTION

Petitioners filed this lawsuit on January 11, 2007, and an Amended Petition on December 6, 2007. Petitioners claim that Washington's public school education system for students in kindergarten through grade 12 (K-12) is insufficiently funded in violation of Article IX, section 1, of the state constitution. That provision states:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

In 1978 the Washington Supreme Court held that Article IX required the Legislature to define and fully fund a program of "basic education" for all K-12 students. The Court also directed that the State enact reforms to the basic education system to provide "the broad educational opportunities needed in the contemporary setting" (emphasis added). *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 517, 585 P.2d 71 (1978). Thus, this case will not be decided by evidence of what Petitioners believe will improve education or what they claim is important to education. The case is about whether the State has put in place a system that provides Washington's K-12 public school students with opportunities to obtain a basic education.

At the close of the recently concluded 2009 legislative session, the Governor and Legislature enacted what one of Petitioners' trial witnesses, Senator Fred Jarrett, called the "most significant reform in education that [Washington has] had in 30 years." Jarrett Dep. at 107. Engrossed Substitute H.B. 2261, 61<sup>st</sup> Leg., Reg. Sess. (Wash. 2009) (hereafter HB 2261) set in motion a multi-year process that will complete the reform of and dramatically improve the State's K-12 program, including expanding the definition of basic education, the implementation of newer and more rigorous high school graduation standards and a comprehensive, detailed reworking of the statutory formulae for providing funding to the State's 295 school districts.



1 HB 2261 addresses all but one of the alleged shortcomings of the current K-12 funding  
2 system that are in the Amended Petition.<sup>1</sup> That legislation also constitutes the Governor's and  
3 Legislature's chosen "means" of discharging the State's Article IX duty, which the  
4 Washington courts have repeatedly held is their exclusive prerogative. HB 2261 not only  
5 resolves the alleged constitutional liability issue in this case; it also makes inappropriate, as a  
6 matter of fact and law, the sole remedy requested by Petitioners: a court-ordered study of  
7 what funding is needed to ensure that all Washington students have successful outcomes in  
8 school. HB 2261's passage has effectively mooted the Petitioners' case and justifies this  
9 Court's dismissal of their claims.

## 10 II. SUMMARY OF THE EVIDENCE

11 This case concerns the State's system, programs and funding for K-12 public schools.  
12 All aspects of that system, of those programs and of State and local funding for K-12 schools  
13 are contained in, and governed by, state statutes and regulations. Enacted laws thus are part of  
14 the "evidence" this Court will need to take into account in evaluating the constitutionality of  
15 the State's provision for basic education. The Court will also have to understand and  
16 evaluate the nature of the State's duty under Article IX, the State's current statutory  
17 definition, programs and the formulae for basic education, the on-going reforms of that  
18 definition, those programs and the funding formulae, and the parties' evidence regarding the  
19 alleged inadequacies of the current funding claimed by Petitioners. The Court will also have  
20 to take into account the expert testimony that confirms the lack of a connection between  
21 education funding levels and successful student outcomes, the ineffectiveness of many  
22 programs and services to improve student outcomes and the expert testimony that reveals that  
23 the "cost study" remedy, the only one sought by Petitioners in this case, will be a time and  
24 resource wasting exercise in futility.

25  
26 <sup>1</sup> The other alleged shortcoming—funding for school facilities construction—is the subject of related  
legislation that will improve this aspect of K-12 education financing as well.

1 **A. Making Provision for K-12 Basic Education is the State's Article IX Duty.**

2 Though pleaded in terms of section 1 of Article IX, section 2 is also germane to the  
3 issues in this case. The two sections provide:

4 SECTION 1 PREAMBLE. It is the paramount duty of the state to make ample  
5 provision for the education of all children residing within its borders, without  
distinction or preference on account of race, color, caste, or sex.

6 SECTION 2 PUBLIC SCHOOL SYSTEM. The legislature shall provide for a  
7 general and uniform system of public schools. The public school system shall  
include common schools, and such high schools, normal schools, and technical  
schools as may hereafter be established....

8 The constitutional reference to "common schools" is what has evolved into K-12 public  
9 schools. Common schools originally included children from age six to 21. Tr. Ex. 1475.  
10 Since 1969 the definition of common schools has included children from kindergarten (age  
11 five) through the twelfth grade. Tr. Ex. 1476. Neither common schools, nor the other schools  
12 referred to in Article IX, have ever included children younger than five years who are enrolled  
13 in "pre-K" or early learning programs.

14 Moreover, the "education" for which the State must make provision under Article IX  
15 is "not 'total education' in the sense of All knowledge or the offering of All programs,  
16 subjects or services...[but] 'basic education' through a basic program of education as  
17 distinguished from total 'education' or all other 'educational' programs, subjects or services  
18 which might be offered." *Seattle Sch. Dist., supra*, 90 Wn.2d at 519.

19 **B. The Basic Education Act and Related Statutes Define and Fully Fund a Program**  
20 **of Basic Education.**

21 The Basic Education Act (RCW 28A.150) was enacted in 1977, before the Supreme  
22 Court's decision in *Seattle Sch. Dist. v. State*. In his concurring opinion, Justice Utter  
23 characterized the Act as "a detailed definition of the educational program to be offered  
24 students":

25 The Basic Education Act defines the program evolving from the act to include a  
26 complex series of goals enumerated therein, and the program requirements  
deemed necessary to accomplish these goals, as well as the legislative

1 determination of State resources to implement the program. Laws of 1977, 1<sup>st</sup> Ex.  
2 Sess., ch. 359, § 1.

3 *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 547-48, 585 P.2d 71 (1978).

4 The Basic Education Act contains three elements that together constitute the current  
5 definition of basic education: (1) education system goals, (2) educational program  
6 requirements, and (3) funding ratio/formula procedures. These statutes emphasize that  
7 “opportunities” for education are being provided and funded, not guaranteed student success.

8 **1. Basic Educational System Goals.**

9 As enacted in 1977, the Basic Education Act included the following goals:

10 The goal of the Basic Education Act for the schools of the state of Washington  
11 set forth in this 1977 amendatory act shall be to provide students with the  
opportunity to achieve those skills which are generally recognized as requisite  
to learning. Those skills shall include the ability:

12 (1) To distinguish, interpret and make use of words, number and  
13 other symbols, including sound, colors, shapes and textures;

14 (2) To organize words and other symbols into acceptable verbal and  
nonverbal forms of expression, and numbers into their appropriate functions;

15 (3) To perform intellectual functions such as problem solving,  
16 decision making, goal setting, selecting, planning, predicting, experimenting,  
ordering and evaluating; and

17 (4) To use various muscles necessary for coordinating physical and  
18 mental functions.

19 Laws of 1977, Ex. Sess., ch. 359, § 2 (formerly RCW 28A.58.752).

20 In 1993, through House Bill 1209, the goals were replaced and improved to provide the  
21 following:

22 The goal of the Basic Education Act for the schools of the state of  
Washington set forth in this chapter shall be to provide students with the  
opportunity to become responsible citizens, to contribute to their own economic  
23 well-being and to that of their families and communities, and to enjoy  
productive and satisfying lives. To these ends, the goals of each school district,  
24 with the involvement of parents and community members, shall be to provide  
opportunities for all students to develop the knowledge and skills essential to:

25 (1) Read with comprehension, write with skill, and communicate  
26 effectively and responsibly in a variety of ways and settings;

1 (2) Know and apply the core concepts and principles of  
2 mathematics; social, physical, and life sciences; civics and history; geography;  
3 arts; and health and fitness;

4 (3) Think analytically, logically, and creatively, and to integrate  
5 experience and knowledge to form reasoned judgments and solve problems; and

6 (4) Understand the importance of work and how performance, effort,  
7 and decisions directly affect future career and educational opportunities.

8 RCW 28A.150.210 (emphasis added).<sup>2</sup> These goals and section .210 were amended again in  
9 2007, but the changes do not impact the issues in this case.

## 10 **2. Basic Education Program Requirements.**

11 The second element of the Basic Education Act consists of educational program  
12 requirements. The Legislature has declared that the goals in the previous subsection are  
13 satisfied by implementing the following program requirements:

- 14 • Instruction in the state's essential academic learning requirements<sup>3</sup> and such other  
15 subjects as the school districts determine to be appropriate.
- 16 • Total instructional offering of 450 hours for students enrolled in kindergarten.
- 17 • Annual average instructional offering of 1,000 hours to students enrolled in  
18 grades 1-12.
- 19 • A program accessible for 180 school days per year in such grades as are conducted  
20 by a school district, and 180 half-days, or equivalent in kindergarten.

21 See RCW 28A.150.220. The original 1977 version of the program requirements prescribed  
22 instruction in specified academic subjects such as language arts, mathematics, social studies,

23 <sup>2</sup> The findings of intent that accompanied the 1993 amendment provide in part, "[i]t is the intent of the  
24 legislature to provide students the opportunity to achieve at significantly higher levels, and to provide alternative  
25 or additional instructional opportunities to help students who are having difficulty meeting the essential academic  
26 learning requirements in RCW 28A.630.885." Laws of 1993, ch. 336, § 1.

<sup>3</sup> The essential academic learning requirements are the basic skills related to reading, writing,  
mathematics, science, and other subject areas derived from the learning goals set forth in RCW 28A.150.210. See  
also RCW 28A.655.060.

1 music, art, health, and physical fitness. Laws of 1977, Ex. Sess., ch. 359, § 3. Legislation in  
2 1993 substituted essential academic learning requirements for discrete classroom subjects.

3 The Legislature has created other substantive programs that are part of basic education:  
4 special education under RCW 28A.155, some degree of student transportation under  
5 RCW 28A.160, the learning assistance program under RCW 28A.165, and the transitional  
6 bilingual program under RCW 28A.180.

7 The final link in the substantive instructional program chain concerns the instructional  
8 duty of teachers to provide students the instruction and “opportunity” to achieve.

9 It is the intended purpose of this section to guarantee that the certificated  
10 teaching and administrative staff in each common school district be held  
11 accountable for the proper and efficient conduct of classroom teaching in their  
12 school which will provide students with the opportunity to achieve those skills  
13 which are generally recognized as requisite to learning.

14 RCW 28A.150.240. (Emphasis added).

### 15 **3. Basic Education Funding Ratios.**

16 Generally speaking, typical school expenditures break down into 82.6% on staff  
17 (teachers, classified and administrative personnel) and 17.4% non-employee costs. Tr. Ex. 43,  
18 p. 2 § 5. In order to fund the staff providing the substantive content identified above, the third  
19 element of the Basic Education Act establishes prescribed minimum staff-to-student ratios and  
20 associated funding formulas. RCW 28A.150.260.<sup>4</sup> Accordingly,

21 Basic education shall be considered to be fully funded by those amounts of  
22 dollars appropriated by the legislature pursuant to RCW 28A.150.250 and  
23 28A.150.260 to fund those program requirements identified in  
24 RCW 28A.150.220 in accordance with the formula and ratios provided in  
25 RCW 28A.150.260 and those amounts of dollars appropriated by the legislature  
26 to fund the salary requirements of RCW 28A.150.100 and 28A.150.410.

RCW 28A.150.250. (Emphasis added)

<sup>4</sup> School districts are free to hire more staff than the minimum the State provides for basic education, but at local expense.



Moreover, RCW 28A.150.270 provides that districts may use basic education funds for school construction.<sup>5</sup>

RCW 28A.150.370 lists additional programs for which legislative appropriations must be made (special education) and those for which appropriations may be made (funding for population factors such as urban costs, racial and disadvantaged programs and other categorical programs). RCW 28A.150.380 provides that education funding is accomplished through biennial (and supplemental) appropriations from the State general fund, typically referred to as Appropriations Acts.

Pursuant to these statutes, every district receives a general (basic education) amount for each student in the district. In the 2008-098 school year, the statewide average amount was approximately \$5,000.00. If a student qualifies for special education, funding for that student is 193% of the general allocation. Learning Assistance and English Language Learners generate additional amounts. The general allocation and categorical amounts of funding are cumulative, depending upon how many funding categories apply to a student.

#### **4. State Appropriations and Allocations for Basic Education.**

The process by which the State fully funds the costs of the basic education program requires several steps. In anticipation of each biennial funding session of the Legislature, the Executive Branch (through its Office of Financial Management) builds a budget for K-12 education. The Office of the Superintendent of Public Instruction (OSPI) contributes to that process by suggesting enhancements above and beyond the basic education funding already determined to be needed in anticipation of the ensuing years' educational costs. OSPI is not responsible for determining, nor does it have the authority to determine, the funding levels needed for the basic education program. Because biennial funding covers the ensuing two years, the education budget necessarily forecasts anticipated costs, in part, based on past

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<sup>5</sup> Additional and distinct from the State basic education program, funding for school construction also is supplied through capital appropriations.

1 historical experience. The staff-to-student ratios and NERC (non-employee related costs)  
2 factors<sup>6</sup> contained in the Basic Education Act, plus school district reported and projected  
3 enrollment figures, determine and update the costs of basic education. Basic education  
4 program costs then are fully funded through annual appropriations in statutory Appropriations  
5 Acts. RCW 28A.150.380.

6 Following appropriation, OSPI allocates funding to the school districts. Amounts  
7 provided are driven by statutory formulae that comprise reported student enrollment, staffing  
8 ratios, salary and benefit calculations and NERCs. The allocation process conforms the  
9 forecast of costs to actual experience. If more funding is needed, supplemental appropriations  
10 are made by the Legislature to cover full funding of those costs.

11 Finally, though not part of funding for “basic education,” the K-12 funding system  
12 established by the Legislature does authorize local districts to use local funding to provide  
13 staffing and other needs that are beyond the State’s program of basic education. For example,  
14 most districts pay teachers more than the State’s statutory base salary amounts. They do so  
15 pursuant to locally negotiated collective bargaining contracts for “supplemental” pay and  
16 other compensation under RCW 28A.400.200. However, that statute mandates:

17 No district may enter into a supplemental contract under this subsection for the  
18 provision of services which are a part of the basic education program required  
by Article IX, section 3 of the state constitution.

19 RCW 28A.400.200(4).<sup>7</sup>

20 The statutes and the appropriations-allocations process described above have been  
21 fully funding the basic education program for 30 years. Over that period, the total state  
22 funding for public K-12 education has grown from \$931,866,000 in 1979 to \$7,004,699,904  
23 in 2008-09. Since 1981, student population has increased by 37.7%, while the number of staff  
24 employed by schools has grown by 67.8%. In that time, there have been only two challenges

25 <sup>6</sup> Non-employee related costs. Staff costs and NERC’s are 100% of costs funded under the Basic  
Education Act.

26 <sup>7</sup> Article IX, section 3, is entitled “Funds for Support.”

1 to basic education's constitutional adequacy: *Seattle Sch. Dist v. State* (a 1983 trial court  
2 decision, not the Supreme Court case above), decided 25 years ago, and this case.

3 **C. During the 1990s the State Enacted and Implemented Reforms to Basic**  
4 **Education.**

5 In 1992 and 1993, Washington pursued what would become a national trend to  
6 transition K-12 public education from a "seat time" system and approach to a "performance  
7 based" one. The former focused on students' progression grade level by grade level,  
8 determined by locally-determined standards and culminating in graduation after twelfth grade.  
9 A "performance based" education system would measure how much students were learning at  
10 various stages in their twelve years of schooling, based upon statewide, uniform standards,  
11 with State assessments or tests measuring student performance based upon those state  
12 standards. Graduation from high school would depend, in part, on performance on these  
13 assessments.

14 The transition in Washington was launched (but not completed) by HB 1209, enacted  
15 by the Legislature in 1993.<sup>8</sup> The legislation set in motion a process for the State's  
16 development of its Essential Academic Learning Requirements (the EALRs), and of the  
17 assessments to be developed and then implemented (the WASL) for use at different grade  
18 levels in all Washington school districts. It was known in 1993, and so provided in HB 1209,  
19 that this transition would be implemented no earlier than in time for the 2000-01 school year.  
20 Accordingly, EALRs and WASL assessments in Reading, Writing, Communication and Math  
21 were developed and implemented within that period. However, the science standards and  
22 assessments were not implemented until the 2004-05 school year.

23 Funding for the expected costs of developing and implementing the transition was  
24 spelled out in HB 1209, primarily grants of state funds to assist school districts with the costs  
25 of teachers, classroom aides and administrators for the additional time and resources needed to

26 <sup>8</sup> The text of HB 1209 concerning the goals and opportunities for students is set forth on page 5. That  
text was codified in RCW 28A.150.210.



1 implement practices to improve student learning. In 1995, the Legislature also enacted  
2 sweeping reforms to the program and funding of special education. In addition to funding the  
3 targeted areas for the basic education transition, HB 1209 created a fiscal study committee to  
4 study the public school funding system and, by January 1995, to report back to the Legislature  
5 its findings and recommendations for a new funding model, if one was needed.

6 Finally, HB 1209 provided for the development of a statewide accountability system  
7 for all subject areas and grade levels in all 295 districts, to be developed by December 1998  
8 (later extended to June 30, 1999). This accountability system would provide information on  
9 student performance, aggregating student performance levels by school and by school districts,  
10 according to students' gender and ethnicity, their socioeconomic status and other factors. The  
11 accountability system, when fully implemented, would allow comparisons of student  
12 performance by school, district and statewide.

13 HB 1209 created a Commission on Student Learning which carried out the reforms and,  
14 in conjunction with OSPI and other state agencies, reported annually to the Legislature  
15 regarding the development of the EALRs, the development and implementation of the  
16 assessment system (the WASL) and the award and allotment of the funding streams authorized  
17 by HB 1209.

18 In 1995, the HB 1209-authorized fiscal study committee reported back to the  
19 Legislature, based upon an independent consultant's analysis of Washington's K-12 funding  
20 system. The consultant reported about how Washington's education funding system compared  
21 to an "optimal" funding system: "When compared to the seven concepts of an optimal school  
22 finance system, the Washington school finance system does very well. In fact, it meets or  
23 exceeds the expectations set out by nearly all of the concepts." Tr. Ex. 1519.00044.

24 The first WASL assessment results for all tested grade levels that informed the State  
25 about levels of student performance became available in 2005. Those results indicated that  
26 some students were struggling with the assessments and needed help. Thus, the Legislature

1 increased funding to, and changed the formula for, the State's providing Learning Assistance  
2 Program (LAP) that was in place to assist districts with programs and services for struggling  
3 students.

4 **D. The State Studied Potential Reforms to the Funding of a Performance Based K-12**  
5 **Education System Through Washington Learns and the Basic Education**  
6 **Financing Task Force.**

7 In the 2005 legislative session, the Governor sponsored and the Legislature passed  
8 Engrossed Second Substitute S.B. 5441, 59<sup>th</sup> Leg., Reg. Sess. (Wash. 2005), which created  
9 "Washington Learns," a 16-month process for studying all sectors of the State's education  
10 system, from early learning (or pre-kindergarten) to K-12 to higher education and workforce  
11 preparation. Washington Learns had three advisory committees, one for each level of  
12 education, with each committee meeting monthly. A Steering Committee, responsible for  
13 coordinating the feedback and reports from the advisory committees, was chaired by Governor  
14 Gregoire. The K-12 Advisory Committee was chaired by then Superintendent Terry Bergeson.  
15 Over eighty-five people served on the Advisory and Steering Committees.

16 Washington Learns also commissioned studies by the out-of-state consultants, Picus &  
17 Odden. One of their studies presented "prototype" schools as a basis for examining the  
18 prospective staff make-up and potential costs of elementary, middle and high schools that were  
19 intended to help students to achieve at higher levels and to build a new finance structure for  
20 Washington's schools.

21 Washington Learns was concerned with the first rounds of WASL assessment results  
22 and it included the observations that 50% of children entering kindergarten were reported by  
23 teachers as arriving at school not ready to succeed; that 54% of minority students on average  
24 were graduating from high school on time (in four years) and that 74% of all high school  
25 freshmen graduated.

26 Washington Learns produced a final report on November 13, 2006. Tr. Ex. 16. The  
report concluded, in part, that building a "world class education system" (as opposed to the

1 current basic education system) would require significant additional funds as well as the  
2 strategic reallocation of existing resources. The report envisioned a number of focused  
3 initiatives to implement the transition to a “world class” system, a commitment to obtaining  
4 more resources and a ten-year plan of action to complete the process. “Next steps” included a  
5 plan to have recommendations for the design of a new funding structure and for student,  
6 teacher and district accountability measures by December 2008. In addition, a number of more  
7 immediate steps were recommended for implementation by the Legislature, that were put in  
8 place during the 2007 legislative session.

9 The 2007 Legislature also enacted the statutory authorization for the creation of a Basic  
10 Education Finance Task Force that would carry on the work of Washington Learns<sup>9</sup> and  
11 develop detailed recommendations for a new funding system for K-12 public schools.  
12 Implementing the deadline recommended by Washington Learns, the Task Force was directed  
13 to complete its work and issue a comprehensive report and set of recommendations by  
14 December 2008, so that the Legislature could take action beginning in the 2009 legislative  
15 session.

16 From the fall of 2007 through December 2008, the Task Force conducted numerous  
17 meetings and heard many presentations from stakeholders such as school districts, local  
18 educators and representatives of state agencies concerning the need for, and components of, a  
19 new approach to funding and to accountability. OSPI staff conducted presentations, based in  
20 part on the operating results and financial data of school districts and based in part on  
21 perceived additional needs derived from workgroups assembled from school district staff. The  
22 implicit, but incorrect assumption at OSPI and in the workgroups was that the State should  
23 continued to fund all current basic education levels and fund all additionally desired needs.  
24 Workgroups were charged with identifying desirable programs, services and products. That  
25

26 <sup>9</sup> Washington Learns’ statutory authority expired in 2006.

1 process formed the basis for a funding proposal that OSPI submitted to the Task Force in the  
2 summer of 2008.

3 The Task Force received a number of other proposals, including the one substantially  
4 adopted by the Task Force in the fall of 2008. That proposal was developed and sponsored by  
5 the six state legislators on the Task Force. The other proposals, including the OSPI proposal  
6 and one proposed by Petitioners' consultant and expert witness, David Conley, were rejected.

7 The final Task Force Report and Recommendation was unanimously adopted by its  
8 members and issued on January 14, 2009. The Report contained detailed staffing models for  
9 each school level: elementary, middle and high school. It proposed reduced class sizes, early  
10 learning programs for three and four year olds from families with low incomes, increased  
11 funding for students struggling with academic performance, students with disabilities and  
12 students whose primary language was not English. The Report called for significant changes  
13 in the qualifications and promotion of teachers as well as factoring into total teacher  
14 compensation regional cost of living adjustments and pay levels commensurate with other  
15 professions. The Report contained estimates for substantial increases in funding to offset the  
16 expected costs of the new system that the Legislature would enact.

17 There were three significant observations about the total estimated costs, about the  
18 extended period of time for implementation of any recommended changes, and about the  
19 expected benefits of making the additional, substantial investment. Cost estimates (which Task  
20 Force members and support staff will confirm were on the high side) predicted potential  
21 increases of 6.3 to 8.9 billion dollars per biennium. Implementation would take at least six  
22 years following enactment of all necessary reform legislation. Finally, and most significantly,  
23 the Report contained a forecast that student outcomes would only improve 9% in the State's  
24 high school graduation rate *14 years* after full implementation of the Task Force's  
25 recommendations. The Washington State Institute for Public Policy (WSIPP), which produced  
26 this projection in its role as the primary research body for the Task Force, cautioned that the

1 projections reflected what national research had revealed: “the underlying uncertainty in the  
2 expected effect of educational resources on student outcomes.” Tr. Ex. 124 at 25. Most  
3 tellingly, the Institute forecast that simply infusing substantially increased funding levels into  
4 the same system—Petitioners’ expert witness’s position and the remedy Petitioners seek in this  
5 case—could do no better than a less than 1% increase in the State’s graduation rate 14 years  
6 after implementation. *Id.*

7 **E. In 2009, the State Enacted HB 2261 to Implement K-12 Education Reforms,**  
8 **Including Substantially Increased State Funding, Beginning in 2011 and**  
9 **Concluding in 2018.**

10 The Report and Recommendation of the Basic Education Finance Task Force issued just  
11 as the 2009 legislative session got underway. Task Force legislation-members introduced two  
12 companion bills, HB 1410 and SB 5444. These bills would have enacted into state law many  
13 specific Task Force recommendations, with full implementation of all reforms by 2017.

14 The Washington Education Association (WEA)—a principal of Petitioners’ Network for  
15 Excellence in Washington Schools (NEWS) --virulently opposed this legislation. It lobbied  
16 intensively for the alternative funding approach<sup>10</sup> that the Task Force had rejected—the one by  
17 Petitioners’ expert witness, David Conley. The WEA and Conley proposal, known as HB 1817  
18 and SB 5607, would have substantially increased funding under the current K-12 basic education  
19 system without implementing the Task Force’s recommended reforms to teacher qualification,  
20 promotion and compensation and without the accountability provisions regarding school, teacher  
21 and district responsibility for student performance. The Legislature rejected the Conley and WEA  
22 bills. HB 1410 and SB 5444 were ultimately withdrawn because of the WEA’s opposition.

23 However, the withdrawn bills were soon replaced with proposed companion bills  
24 HB 2261 and SB 6048. The new bills took a more measured approach to the implementation of  
25 the Task Force recommendations, but still included provisions for the development and

26 <sup>10</sup> The Conley Study was incorporated into legislation proposed by the “Full Funding Coalition.” Conley  
was a consultant to this interest group and the WEA was the Coalition’s primary constituent.



1 implementation of a new funding system and for accountability of districts, schools, and teachers  
2 for student performance. The bills contained language implementing reforms steadily over a  
3 period of ten years (just as Washington Learns had envisioned), beginning in 2009 and concluding  
4 in 2018. What emerged after the House and Senate differences were reconciled was ESHB 2261,  
5 later referred to simply as HB 2261, which called for the creation of a Quality Education Council  
6 (QEC) of legislators and representatives from the State Board of Education, OSPI, Professional  
7 Education Standards Board and the Department of Early Learning. In HB 2261, the Council  
8 would be tasked with the monitoring of the implementation of an expanded and evolving  
9 definition of basic education, with reporting to the Legislature before the 2010 legislative session  
10 about issues the Council identified as needed in the short term, with recommending a schedule in  
11 that report for the concurrent phase-in of the reformed program of K-12 education, for increases in  
12 funding and for identifying a schedule for implementation of a new pupil transportation funding  
13 formula beginning in 2013.

14 Under the proposed legislation, new teacher certification standards would be implemented  
15 in time for the 2011-12 school year. Compensation workgroups would be tasked to develop and  
16 recommend a new, enhanced salary allocation model for teachers, a new and enhanced system to  
17 address supplemental funding for K-12 education through local levies and a new comprehensive  
18 data improvement system that the State would develop and fund in order to link educator and  
19 student performance. Legislatively-identified workgroups were also delineated in the bill in order  
20 to establish a standardized accounting system that would separately track federal, state and local  
21 revenues and costs to make it clear that the State and school districts shared responsibility for  
22 addressing the problem of low-performing schools.

23 While HB 2261 specified the structure, mechanisms and timeframes for K-12 reform, the  
24 increased funding levels, if needed, the appropriate restructuring of the use of existing dollars and  
25 consideration of specific tax sources, if needed,<sup>11</sup> or appropriate restructuring the use of existing

26 <sup>11</sup> The State's General Fund, by statute, is the source of basic education funding. RCW 28A.150.380.

1 dollars were not spelled out. Instead, the Legislature determined that those issues would be better  
2 addressed by the QEC with findings and specific recommendations for their implementation and  
3 enactment for all K-12 programs, including pupil transportation. The deadline for full  
4 implementation was identified as 2018. HB 2261 was subsequently adopted by the full 2009  
5 legislative body.

6 The Governor signed HB 2261 into law with two line item vetoes. She questioned  
7 whether the specific types of early learning or highly capable programs should be enacted.  
8 Instead, the Governor preferred that the State consider early learning for all Washington  
9 pre-schoolers, not just those from low-income families. The veto of highly capable student  
10 funding only removed a “safety net process” for districts with alleged needs for highly capable  
11 student funding beyond what the State would provide in the new funding formula.

12 Passage of HB 2261 was greeted enthusiastically by educators, by local school districts  
13 and by state and local officials. It was endorsed and supported by the legislators and school  
14 district representatives that had served on the Task Force, by many school districts and their  
15 superintendents, and by organizations that belong to Petitioner NEWS like the Washington State  
16 PTA. The WEA, however, remained opposed.

17 **F. HB 2261 Resolves the Petitioners’ Alleged Deficiencies in the Current K-12 Public**  
18 **School System.**

19 During the Task Force proceedings, OSPI presented information suggesting there were six  
20 areas where current state funding was not adequate to cover district expenditures. (A very  
21 different question than the one underlying this case: whether Washington is meeting its obligation  
22 under Article IX as defined by *Seattle Sch. Dist. v. State*.) Areas included: (1) staff salaries and  
23 health benefits; (2) numbers of staff funded versus staff hired by districts; (3) non-salary  
24 expenditures such as maintenance and operating expenses; (4) special education; (5) categorical  
25 funding for struggling students and (6) pupil transportation. Each category indicated that school  
26 districts spent more funds than were provided by the State, allegedly with local levy funding.

1 Assuming Petitioners can prove that districts do spend local money on these items, there  
2 are reasons why the expenditures at issue should be paid for with local funds. For example, state  
3 law allows districts to use local funds to pay teacher compensation above what the State funds, if  
4 the districts choose to provide such supplemental compensation. RCW 28A.400.200. That law,  
5 however, prohibits districts from using local funds to provide *basic education services*.  
6 Moreover, the number of state-funded non-teacher staff is set by statute, with the districts free to  
7 choose to hire additional staff at local expense. Finally, the districts often make the erroneous  
8 claim that “supplemental” state funding for special education and struggling students is all the  
9 state funding they get for these particular students, excluding the basic education allocation built  
10 into the basic education formula the State provides for all students based on enrollment.  
11 Petitioners’ assertion overlooks the single largest component of the State’s basic education  
12 funding, the basic education or general apportionment the State provides for every student, and  
13 improperly understates the state funds received.

14 Regardless of the current uses of local funding, HB 2261 contains provisions that resolve  
15 each of the above “underfunding” scenarios. The current basic education funding system will be  
16 replaced by the new comprehensive funding system under HB 2261.<sup>12</sup>

17 **G. Even Without HB 2261’s Reforms, Washington’s K-12 Public Schools Provide All**  
18 **Students With the Opportunity and Resources to Obtain a Basic Education.**

19 It is anticipated that Petitioners will claim at trial that evidence of the State’s failure to  
20 fully fund the current (unreformed) system of basic education is demonstrated by:  
21 (1) unsatisfactory student performance on WASL and numbers of students not graduating;  
22 (2) school district financial statements indicating that districts expend more than the state and

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23 <sup>12</sup> Petitioners also contend that the State ought to fund local school construction projects as part of its  
24 Article IX duty. Indeed, current statutes allow districts to use basic education funds for construction. The State  
25 has also traditionally funded new and renovated school facilities in tandem with local funding. This jointly  
26 funded effort ensures that local needs and plans are accompanied by a local financial stake in the capital projects  
undertaken by local voters and locally elected school boards. A legislative task force on the many issues that  
determine where, when, the types of school facilities and their funding recently issued its findings and  
recommendations. Tr. Ex. 261. These recommendations were the subject of legislation during the 2009 session.  
School construction funding is thus the subject of ongoing reform by the State.



1 federal governments provide; (3) state-commissioned studies, the OSPI proposal to the Task  
2 Force and statements made by state and local officials alleging that there are insufficient state  
3 resources provided; and (4) certain education programs, practices and services allegedly not  
4 being provided and funded as part of the State's duty under Article IX.

5 Respondent's evidence will rebut each of these contentions. As to student achievement  
6 levels, WASL scores have greatly improved, particularly in Reading and Comprehension/Writing,  
7 which are the only assessments ever made a requirement for high school graduation. The  
8 graduating classes of 2008 and 2009 attained over a 90% passing rate. Mathematics assessment  
9 scores have not improved as dramatically, but the evidence indicates that issues about the math  
10 curriculum being taught at the direction of school districts and the math WASL assessment itself  
11 are the culprits, not funding levels.

12 The State will also show that the performance of Washington students reflects the  
13 adequacy of Washington's public schools, including funding levels, and the quality of instruction  
14 being offered. This is reflected in, among other places, Washington students' performance on  
15 national tests and assessments. For example, on the National Assessment of Educational Progress  
16 or NAEP exam, a national test that measures student achievement in reading and math,  
17 Washington's student's generally rank in the top third of all states. Even more impressively,  
18 Washington students earn the highest SAT reading and math scores among states with more than  
19 25% of their students taking that college entrance exam. And the American Legislative Exchange  
20 Council recently ranked Washington twelfth among states in its Annual Report Card on  
21 Education, based on its students' performance on the NAEP, the SAT and the ACT. All of these  
22 indicators show that Washington's public schools are providing their students with adequate  
23 educational opportunities.

24 The State also will present expert testimony that many of the challenges faced by  
25 Washington's schools are actually national, not state, issues. For example, states across the  
26 country are finding it difficult to recruit math, science and special education teachers. Similarly,

1 districts and states across the nation are struggling to find ways to close the achievement gap for  
2 ethnic minorities and low-income students, regardless of how much money they spend per pupil.  
3 The State does not deny that Washington's public schools face some of these challenges, but as its  
4 experts will testify, these problems are not unique to Washington and are not the result of  
5 underfunding public education.

6 The Petitioners will show that school district financial statements reporting expenditures  
7 the districts coded to "basic education" exceed state revenues. However, the superficial use of  
8 these documents to infer "underfunding" is not persuasive. OSPI representatives, knowledgeable  
9 about these documents, called F-196s, will confirm that they are not a reliable source of  
10 information for the purpose of demonstrating that state funds are inadequate to provide a basic  
11 education. The state witnesses will also testify that these documents will not prove that "local  
12 levy" funds are used to defray basic education costs.

13 Furthermore, to avoid the difficulties inherent in familiarizing the Court with the  
14 operations of 295 school districts, the parties selected thirteen "focus districts" for study.  
15 Respondent retained and dispatched three experts—one a former Washington school district  
16 superintendent—to conduct intensive site visits to many of the elementary, middle and high  
17 schools in the focus districts. Among the three experts, over 100 schools and 500 classrooms  
18 were visited and observed during the school day.

19 The experts were asked to look at the resources that were available, to look at the  
20 facilities, and to observe instruction in the visited schools to see what kind of instruction was  
21 being provided for students. They were to observe the facilities to determine whether there were  
22 any problems that would prohibit students from experiencing the opportunity to have an adequate  
23 basic education. The experts were asked to look at whether the buildings were in such a state that  
24 learning could not occur. Are there technology, computers, vocational classes, reading, writing,  
25 math, science, English, bilingual classes, laboratories, libraries, music rooms, gymnasiums,  
26 athletic fields, art on the walls, in the classrooms, and what kind of furnishings are available? Did

1 they observe any safety hazards that could not be easily fixed? The experts were asked to  
2 determine whether the educational system in place in those districts was sufficiently resourced to  
3 provide children with the opportunity to receive an adequate basic education.

4 The site visit experts observed that the schools were in very good condition, the schools  
5 had no conditions that would inhibit learning, and they generally saw very good instructional  
6 practices in place. The experts saw competent teachers working with enthusiastic students,  
7 delivering good instructional services for at least 98 percent of the classrooms visited. The  
8 experts did not see any inadequately equipped classrooms or schools.

9 The overall assessment indicated that the facilities were in good condition. Teachers were  
10 well prepared, knowledgeable, held students to a high standard, and students were attentive when  
11 in class. The classrooms were orderly, students were well behaved. When students passed  
12 between classes, there was evidence of good organization and management at the school. For  
13 schools that need to improve on their overall passing rates for the state assessment tests, the  
14 experts observed that the resources were in place to allow for the necessary improvement.

15 In the final analysis, the site visit experts found that in these 13 focus districts, the district  
16 leadership and the schools themselves had the resources necessary to provide their students the  
17 opportunity to obtain a basic public education. All three experts took numerous photographs  
18 during their school visits, and these photographs will corroborate the overall quality of the schools  
19 in the focus districts.

20 As for statements by state officials and, specifically, presentations to, and the Report and  
21 Recommendation of, the Basic Education Finance Task Force, this "evidence" of inadequate  
22 funding for K-12 education was developed in the context of the State's desire to take K-12  
23 schools beyond the "current" definition, program and funding of "basic education." Similar  
24 statements and presentations occurred as part of the State's effort to reform the "current"  
25 programs and funding for pupil transportation and school facilities construction or renovation.

1 Finally, witnesses will testify that “basic education” currently is adequately defined and funded by  
2 the Legislature in the Basic Education Act, related statutes and in the Appropriations Acts.

3 Washington’s existing resources provide students with an adequate opportunity to learn,  
4 and the State’s recent passage of HB 2261 is designed to ensure that Washington students  
5 continue to receive adequate educational opportunities. The State will present expert testimony  
6 that this legislation represents a rational step forward in education reform and reflects an ongoing  
7 legislative process that should be given the opportunity to succeed.

8 Beyond the Legislature’s role in school funding, Respondent will also present expert  
9 evidence regarding the role played by local districts. This testimony will explain that districts  
10 make policy choices for their schools, and that an ineffective allocation of resources at the district  
11 level is not indicative of an underfunded school system. Moreover, the State will present expert  
12 testimony that districts often have the means, if not the will, to use resources in unique ways like  
13 merit pay or increased salaries in hard-to-staff subjects, yet frequently fail to consider such  
14 alternatives.

15 Finally, the State will offer lay and expert testimony that the programs, interventions and  
16 practices that Petitioners want added to what the Constitution requires as “basic education” are not  
17 scientifically valid, particularly when it comes to improving student performance. National  
18 research and experience has cast substantial doubt upon the relationship to improved student  
19 outcomes of early learning programs, of reduced class sizes, of blanket increases to teacher  
20 compensation, of staff professional development expenses or overall increased levels of funding  
21 for education. Indeed, employing the Conley cost study as a recent example of flawed scientific  
22 analysis that strains to predict better outcomes with tremendous increases in funding, the State’s  
23 experts will opine that “costing out” studies do not provide a scientific or rational basis for  
24 mandating that the State either increase education funding in general or increase funding to  
25 provide the types of programs, services or enhancements that Petitioners want.

### III. LEGAL ARGUMENT

The State's duty under Article IX is to define, fund and reform basic education. To establish that the State has breached this duty, Petitioners must prove beyond a reasonable doubt that the State provides constitutionally inadequate resources, that programs or services are lacking that must be provided as constitutional imperatives, and that the chosen reforms of programs and funding will not address these issues. Even if they are able to meet their heavy burden of proof, Petitioners will not be able to establish entitlement to the sole remedy requested—a court-ordered study of what total funding is needed to ensure successful educational outcomes for all students. That remedy is contrary to Washington law and, based upon expert analysis and its failure to work wherever it has been tried, would be an exercise in futility.

#### A. Washington's Supreme Court Has Held that the Article IX Duty Is to Define, Fully Fund and Reform Basic Education.

The terms of Article IX, section 1, of the state constitution were defined and the entire section give its legal effect in *Seattle School District v. State*, 90 Wn.2d 476, 518, 585 P.2d 71 (1978). The words "paramount", "ample" and "education," both individually and collectively, are simply "guidelines" to assist the Legislature and Governor in fulfilling the Article IX, section 1, duty to provide fully sufficient funds for the general and uniform system of public schools under Article IX, section 2. Indeed, the Court cautioned that:

However, the broad guidelines which we have provided do not contemplate that the State must furnish "total education" in the sense of All knowledge or the offering of All programs, subjects, or services which are attractive but only tangentially related to the central thrust of our guidelines. Specifically, then, we shall refer to the Legislature's obligation as one to provide "basic education" through a basic program of education as distinguished from total "education" or all other "educational" programs, subjects, or services which might be offered.

*Id.* at 519. Whatever the definition of its terms, the Constitution simply requires a "definition of basic education or a basic program of education....[and] funding accomplished by means of dependable and regular tax sources." *Id.* at 520.



1 The Court also clarified that the judiciary had the authority to interpret and construe the  
2 legal effect of the Article IX duty, but that “the general authority to select the means of  
3 discharging that duty should be left to the Legislature.” *Id.*

4 Finally, in discussing the future scope of basic education, the Court observed that it must  
5 be reformed periodically by the Legislature to embrace “educational opportunities needed in the  
6 contemporary setting to equip our children for their role as citizens and as potential competitors in  
7 today’s market.” *Id.* at 517. Accordingly, Judge Robert Doran (author of the trial court opinion  
8 affirmed by the Supreme Court in the 1978 decision) decided a 1983 challenge to the Basic  
9 Education Act by ruling:

10 The Legislature, under Article IX, section 1, not only has the power but is required  
11 to continually review, evaluate, and revise, if necessary, the educational system of  
12 the state and the program of education and its funding to meet the current needs of  
the children of the state. *See School Funding I*, 90 Wn.2d 476, 517-18.

13 *Seattle Sch. Dist. v. State*, Thurston County Cause No. 81-2-1713-1 (1983). Thus, the State has an  
14 obligation to reform basic education under Article IX, that, in effect, constitutes a bar to the  
15 present case.

16 **B. Petitioners Must Prove Their Constitutional Claims Beyond Reasonable Doubt**  
17 **and Must Prove Constitutional Imperatives Require Inclusion of Any Programs**  
18 **or Services Not Currently Part of Basic Education.**

19 Petitioners’ only claim is that the State has failed to comply with its Article IX, section 1,  
20 duty to fully fund a basic education for Washington’s public school children. Every aspect of the  
21 State’s K-12 public school basic education—from its definition, to its funding, to its intended  
22 program of reform—is embodied in, and governed by, state statutes and regulations.<sup>13</sup> Even the  
23 funds appropriated every year for K-12 public schools are contained in, and governed by,  
24 statutory Appropriations Acts. Therefore, as a constitutional challenge to statutory programs and  
statutory funding:

25 <sup>13</sup> The definition and funding of “basic education” currently is in RCW 28A.150.210, .250 and .260. The  
26 “reform” legislation is HB 2261. The authority for local districts to pay teachers more than the base amounts  
provided by the State, as long as the teachers aren’t compensated with local funds for basic education tasks, is in  
RCW 28A.400.200.

1 Where the constitutionality of a statute is challenged, that statute is presumed  
2 constitutional and the burden is on the party challenging the statute to prove its  
3 unconstitutionality beyond a reasonable doubt.

4 *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). Indeed, in *Island County v. State*,  
5 135 Wn.2d 141, 147, 955 P.2d 377 (1998), the court held:

6 [T]he beyond a reasonable doubt standard used when a statute is challenged as  
7 unconstitutional refers to the fact that one challenging a statute must, by argument  
8 and research, convince the court that there is no reasonable doubt that the statute  
9 violates the constitution.

10 Challenges to the constitutionality of statutes designed to carry out Article IX's  
11 "paramount duty" are no exception to the above holdings. *Tunstall* considered a challenge to just  
12 such a statute. Moreover, constitutional challenges to Appropriations Acts are evaluated under  
13 this rigorous standard. *E.g.*, *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d  
14 602, 623, 62 P.3d 470 (2003). The Supreme Court applied this standard to a challenge to an  
15 appropriations statute funding alleged Article IX duties in *Brown v. State*, 155 Wn.2d 254, 266,  
16 119 P.2d 341 (2005):

17 Brown...has not shown beyond a reasonable doubt that the legislature violated the  
18 constitution by reducing the number of days it was willing to fund [in the basic  
19 education Appropriations Act].

20 Petitioners claim that they do not challenge the constitutionality of any state statute or  
21 regulation. Tr. Ex. 86, 1025, 1026. However, if this is true, then the entire statutory framework  
22 for basic education and its annual funding is conclusively presumed constitutional. Similarly, all  
23 education-related statutes—like RCW 28A.400.200, authorizing that supplemental teacher  
24 compensation be paid with local funds—are unchallenged and conclusively presumed  
25 constitutional. Under such circumstances, it is difficult to understand how the current system  
26 could be deemed unconstitutional and Petitioners' entire case is deficient as a matter of law.

27 In short, Petitioners have to be asserting a constitutional challenge to the State's laws  
28 providing for K-12 education because the entire process of providing for that education is a  
29 product of, and could not exist without, state statutes and regulations. *See Sch. Dist. Alliance for*

1 *Special Educ. v. State*, 149 Wn. App. 241, 266, 202 P.3d 990 (2009) (The Alliance has not met its  
2 burden to prove beyond a reasonable doubt that the special education funding process the  
3 legislature enacted to fund special education in Washington violated Article IX, section 1.).

4 Next, to the extent Petitioners claim that “basic education” must include features such as  
5 early learning or “pre-K” education, reduced class sizes, increased staff levels, increased teacher  
6 compensation, or state funding of the entire costs of school construction, they must do so by more  
7 than evidence that funding for them is “needed” or “important” or “beneficial” or “essential.”  
8 Petitioners must show “by argument and research” that there is a constitutional imperative (a “but  
9 for” relationship) requiring this Court to intervene because, without the program of service in  
10 question, Washington’s students will not have the opportunity for a basic education. As the Court  
11 will hear at trial, the experts sharply disagree on whether these programs can even improve  
12 student performance, much less rise to the level of constitutional imperatives.

13 That Petitioners must prove constitutional imperatives to sustain their case was set forth in  
14 *Seattle Sch. Dist. v. State*, 90 Wn.2d at 519-20.

15 [Plaintiffs] also suggest the need for additional judicial guidelines for matters less  
16 fundamental than those discussed heretofore. For example, they suggested we  
17 adopt guidelines concerning (1) deployment of instructional and classified staff;  
18 (2) staffing ratios and salaries; (3) individualization of instruction for the  
19 handicapped, gifted, below average, and for the particular unique needs of  
20 students; (4) recognition of unique demographical and geographical demands;  
21 (5) local control; and, (6) support services....There are important policy reasons,  
22 historical and otherwise, that pertain to these concerns. But, we cannot say at this  
23 time that any one of them, standing alone, rises to a constitutional imperative  
24 requiring immediate judicial intervention. While the Legislature must Act  
25 pursuant to the constitutional mandate to discharge its duty, the general authority  
26 to select the Means of discharging that duty should be left to the Legislature. See  
*Newman v. Schlarb*, 184 Wash. 147, 153, 50 P.2d 36 (1935). (Emphasis  
supplied.)

27 In the 1983 trial court decision of *Seattle Sch. Dist. v. State*, Judge Doran rejected the  
28 petitioners’ claim that the court could “find the legislation [the Basic Education Act] insufficient  
29 in scope to comply with the constitutional mandate, and then declare what programs and services  
30 must be added thereto in order to conform to the constitution.” *Seattle Sch. Dist. v. State* (1983),



1 Ct. Memo. Op. at 78. To the contrary, Judge Doran ruled that there was no basis for requiring the  
2 State to include funding for extra-curricular activities, programs for gifted students, for all pupil  
3 transportation costs and for food services as required components of the program of basic  
4 education:

5 In *School Funding I*,<sup>14</sup> the Supreme Court did not exclude intervention by  
6 a Court completely, but placed the heavy burden on petitioners to establish “a  
7 constitutional imperative requiring immediate judicial intervention...” before a  
8 Court would consider such intervention....This is particularly true where the  
9 Legislature will unquestionably continue to review its own legislation in the light  
10 of the evidence produced during the lengthy trial to determine whether the current  
11 needs of the children of the state require the programs or services requested—or  
12 the extent to which they should be funded by the State.

13 *Id.* at 80-81. In this case, then, Petitioners must prove beyond a reasonable doubt that, “but for” a  
14 program or service, Washington’s students will not receive a basic education. Absent such proof,  
15 the Court cannot order the Legislature to include these programs as part of basic education.

16 **C. Petitioners Must Prove the State’s Program of Basic Education Is**  
17 **Unconstitutional on Its Face or As Applied.**

18 In addition to proving unconstitutionality beyond reasonable doubt, Petitioners must prove  
19 either that the statutory program of basic education violates Article IX “on its face” or “as  
20 applied” to the specific facts proven in this case. *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5  
21 P.3d 691 (2000). When addressing a facial challenge, the court’s focus is on whether statutory  
22 language—in this case the provisions of the Basic Education Act, the annual Appropriations Acts  
23 or the statutes governing teacher supplemental compensation (RCW 28A.400.200)—violate the  
24 state constitution. *Id.* In fact,

25 A facial challenge must be rejected unless no set of circumstances [exist] in which  
26 the statute can constitutionally be applied.

*Id.*; *Sch. Dist. Alliance v. State*, *supra*, 149 Wn.2d at 247.

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<sup>14</sup> *School Funding I* is a reference to *Seattle Sch. Dist. v. State*, the 1978 Supreme Court decision in which Judge Doran was the trial court judge. His 1983 decision, while unappealed and not binding precedent, was described as “well reasoned” in *Brown v. State*, *supra*, 155 Wn.2d at 262, fn.2.

1 Under an “as applied” challenge, Petitioners must prove beyond a reasonable doubt that  
2 state law, as applied to the facts of this case, has violated (not that it could violate) Article IX by  
3 requiring that districts resort to local levy funds to provide basic education services or programs.  
4 *Tunstall, supra*, at 223.

5 **D. Early Learning Programs, Cost of Living Increases for Locally Funded Staff and**  
6 **Learning Improvement Days Are Not Part of Basic Education as a Matter of Law.**

7 In addition to claiming basic education is currently underfunded, Petitioners claim that  
8 certain programs and services must be ordered by this Court to be part of basic education.  
9 However, this Court can rule as a matter of law that Article IX does not require the State to  
10 provide programs and funding for early learning, for district-funded staff cost-of-living  
11 adjustments or for “Learning Improvement Days.”

12 Early learning programs are for pre-kindergarten children, typically three and four year  
13 olds. By definition they are not within the statutory or commonly accepted class of children who  
14 receive “basic education” services. First, while Article IX, section 1, does not differentiate “all  
15 children” by specific ages, the Supreme Court has held that Article IX’s use of “all children” does  
16 not include children over the age of 18, even though state statutes provided that “children” meant  
17 ages 5 through 21. *Tunstall, supra*, 141 Wn.2d at 218-19. In so ruling, the Court analyzed  
18 provisions of state law that excluded persons over 18 from those required to attend school and  
19 which regarded such persons to have reached the age of majority. *Id.*

20 Historical and current state laws confirm that, for purposes of public education under  
21 Article IX, the school children are those at or over five years of age. Article IX, section 2,  
22 provides that the “general and uniform system of public schools shall include common schools,  
23 and such high schools, normal schools and technical schools as may hereafter be established.”  
24 Among the first enacted laws of the newly created State of Washington was authorization for  
25 “common schools” which were provided for “all children between the ages of six and twenty-one  
26 years.” Tr. Ex. 1475. Indeed, many years later, in 1935, the Superintendent of Public Instruction,

1 discussing the consideration of providing kindergarten as part of primary schooling,  
2 recommended that six years of age be abandoned so that “the school life of children begin not  
3 later than five years.” Tr. Ex. 1477 at 70. In 1969, the definition of “common schools” was  
4 changed to include “a program from kindergarten through twelfth grade.” RCW 28A.150.020.  
5 Lastly, the Basic Education Act of 1977, as amended over time, has consistently regarded the  
6 program of basic education to include kindergarten starting at age five through twelfth grade.  
7 RCW 28A.150.200. Thus, neither Article IX nor any laws promulgated pursuant to that article,  
8 have included children under the age of five or programs that are “pre-kindergarten.” Based on  
9 these authorities and the rationale underlying *Tunstall*, early learning is not part of K-12 “basic  
10 education” under Article IX.

11 Similarly, increases to wages of district employee who are hired and paid with local  
12 funding—as opposed to state-funded staff—are not part of the State’s Article IX duty. *McGowan*  
13 *v. State*, 148 Wn.2d 278, 60 P.3d 67 (2002). In that case, an initiative that tried to make cost-of-  
14 living increases for locally paid staff part of the State’s Article IX duty to provide “basic  
15 education” was held unconstitutional.

16 Finally, the Supreme Court has similarly held that “Learning Improvement Days”  
17 (additional paid days for teachers to engage in professional development activities as opposed to  
18 teaching class) are not part of the State’s Article IX duty. *Brown v. State*, 155 Wn.2d 254, 199  
19 P.3d 341 (2005). Thus, although the State may elect to provide for these programs, it cannot be  
20 compelled to do so under the state constitution.

21 **E. The Evidence Provides No Basis for Ordering That Early Learning, Lower Class**  
22 **Sizes, Compensation for Locally Funded Staff or Learning Improvement Days**  
23 **Are Part of the Article IX Duty.**

24 As noted above, Petitioners must prove beyond a reasonable doubt that there is a  
25 constitutional imperative that makes programs or services part of basic education even though the  
26 State currently does not consider them as such. A constitutional imperative requires more than  
statements by school district or state employees or representatives, that such programs are “basic”

1 or “needed” or “essential” to providing a K-12 education. Petitioners must prove “by argument  
2 and research” that Washington’s students will not receive the opportunity for a basic education  
3 without such programs or services.

4 In contrast to Petitioners’ evidence, Respondent will provide the expert testimony of  
5 nationally renowned educators and education experts who have studied and researched whether  
6 early learning programs, lowered class sizes, increase staff compensation and teacher professional  
7 development activities are linked to improved performance by K-12 students. The evidence  
8 supporting the efficacy of these interventions is weak and inconclusive. As such, the evidence is,  
9 at best, equivocal, thereby injecting reasonable doubt into whether these programs or practices are  
10 constitutional imperatives. There is no basis for ordering that these be part of the constitutional  
11 duty to provide the opportunity for a basic education.

12 **F. The Evidence Provides No Basis for Ordering Increased State Funding to Improve**  
13 **K-12 Student Performance.**

14 The only evidence Petitioners may provide that attempts to tie increased funding to  
15 improved student performance is the expert testimony of Dr. David Conley. He oversaw a study  
16 commissioned by the WEA that was conducted in 2006 and published in 2007, at the same time  
17 Petitioners initiated this lawsuit. The Conley study concluded that \$12,587 per student was  
18 necessary to provide an adequate education to all Washington students. In Dr. Conley’s opinion,  
19 “adequate” means that all students would meet state standards, i.e., pass the WASL and graduate  
20 from high school on time. Conley admits that there is no way of knowing how and when, or even  
21 if, after making the multi-billion dollar increased investment his study calls for, all students will  
22 succeed. He concedes that this level of funding will not guarantee or ensure that all students will  
23 meet state standards.

24 Dr. Conley’s study and opinions stand in contrast to national education research and  
25 studies, and to the work and opinions of Respondent’s experts, that confirms there is no  
26 relationship between levels of funding provided for education and successful or improved

1 outcomes for students. Indeed, the research and analysis performed for the Task Force reached  
2 the same conclusion: the State might expect only a 9% increase in graduate rates 14 years after  
3 the reforms and billion dollar increase in annual State funding were implemented. Tr. Ex. 124 at  
4 25-26. If the State adopts the Conley approach, simply pouring billions more into the same  
5 unreformed system, a less than 1% improvement might occur 14 years after the investment is  
6 made.

7 Dr. Conley's study is replete with methodological errors and faulty assumptions. Most of  
8 the work in the study was subcontracted—from analysis and input by the WEA's lobbyists to  
9 entire segments of the econometric analyses by another expert retained because Dr. Conley could  
10 not do that analysis. In the opinion of Respondent's experts, Dr. Conley's study is scientifically  
11 invalid and wholly inappropriate as a basis for informed, rational legislative decision-making.  
12 Dr. Conley's study is typical of all such "costing out" studies which are worthless as a rational  
13 basis upon which to make education policy and funding decisions.

14 **G. Petitioners' Other Alleged Evidence of Inadequate State Funding of Basic**  
15 **Education Is Unpersuasive.**

16 The other alleged evidence of underfunding is presumably based upon districts expending  
17 more money than the State provides them, upon poor performance by some students, particularly  
18 students of color and those from low socio-economic backgrounds, by the fact that districts hire  
19 more staff at compensation levels higher than the State funds and because funding for pupil  
20 transportation and school operating costs allegedly has not kept up with regular and extraordinary  
21 inflationary trends. Taken individually or collectively, such evidence fails to establish beyond a  
22 reasonable doubt that the State has failed to make ample provision for the opportunity to get a  
23 basic education.

24 That school districts spend more money to run schools than the amounts the State provides  
25 is both authorized by state law and entirely consistent with the constitution. Washington is a  
26 "local control" state with districts free, by and large, to choose what to spend money on and how



1 much. Such a system is typical of those in effect in nearly all states. Use of local levy funding for  
2 K-12 education is not forbidden. Use of that funding to provide basic education services, though,  
3 is not authorized. RCW 28A.400.200(4) (districts may not use locally funded supplemental  
4 contracts for teachers to provide basic education services). While this type of evidence confirms  
5 that districts overspend, that is not the same as proof that they are underfunded.

6 Evidence that not all students pass the WASL, that less than all students graduate from  
7 high school or that some students are not fully prepared for college studies or an instant career is  
8 not proof that State funding is insufficient. First, there is no relationship between levels of  
9 funding and student performance. Moreover, Petitioners' equating poor performance with State  
10 funding levels suggests that the State's constitutional duty is a guarantee that students will  
11 succeed. Article IX requires no such guarantee. The decisions of Washington's courts do not  
12 support the proposition that the State's duty is to ensure successful outcomes. To the contrary,  
13 that duty is to provide the opportunity to obtain a basic education.

14 Finally, the evidence will confirm that: (1) Washington's students attain at generally high  
15 levels and have improved on both statewide and national performance measures, and  
16 (2) Washington enjoys levels of student success much higher than lower performing states that  
17 expend considerably more money per pupil. There is room for improvement, to be sure, but not  
18 for the conclusion that the poor performance of some students is caused by insufficient state  
19 funding.

20 While districts can employ greater numbers of staff and bargain collectively with its staff  
21 for compensation that is higher than the State provides,<sup>15</sup> that is not evidence that State funding is  
22 insufficient. The districts are allowed to do so under state law if they choose to do so. However,  
23 they cannot subsequently leverage what they bargain for in their labor agreements into a

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24 <sup>15</sup> Respondent's experts will opine that Washington's public schools are staffed by experienced,  
25 competent and competitively paid teachers and that the teaching force is remarkably stable. Nearly 100% of  
26 Washington's teachers are "highly qualified" under the federal No Child Left Behind Act. They command  
salaries nearly 15% higher than those in similar occupations and have the lowest teacher turnover rates in the  
western United States.

1 constitutional obligation on the part of the State or, conversely, a failure to provide what the  
2 Constitution requires. To the contrary, RCW 28A.400.200 prohibits that.

3 Finally, the evidence will show that HB 2261 provides the means for addressing all  
4 alleged underfunding issues. It calls for the implementation of a new transportation funding  
5 program based on the work of a state study group and its retained consultant. It calls for the  
6 adoption and implementation of a new funding model for schools based on prototype elementary,  
7 middle and high schools, with increased staff levels and compensation and more detailed items  
8 and greater funding of non-employee costs. This Court should, therefore, defer to the  
9 Legislature's plan to improve the current system where, as in this case, the experts disagree on  
10 what constitutes a "correct" approach to improving education. As Judge Doran ruled in the 1983  
11 *Seattle Sch. Dist. v. State* case:

12 The legislative attempt to comply with Article IX is entitled to a strong  
13 presumption of constitutionality, and petitioners must prove beyond a reasonable  
14 doubt that programs the Legislature has omitted are a constitutional imperative  
15 requiring immediate judicial intervention.

16 The petitioners' burden is not met, for example, where the State represents  
17 to the Court that a particular program is still under consideration by the Legislature  
18 and that a decision will be made promptly, or where the State represents that a  
19 particular problem will be dealt with or a particular program fully funded in a  
20 prompt manner.

21 **H. Petitioners' Remedy Is Contrary to Washington Law, Is Based on Faulty Science  
22 and Has Failed to Work in Every State Where It Has Been Tried.**

23 The only remedy requested by Petitioners is that the Court declare the current basic  
24 education system unconstitutional and order the Legislature to "determine the cost" of what it  
25 would take in State funds to have all students meet State standards. In effect, Petitioners ask this  
26 Court to issue a writ of mandamus or a mandatory injunction to the Legislature that would pre-  
empt HB 2261 and embark the State on a procedure that will be costly, will delay reform and will  
not improve outcomes for Washington's students.

The Washington courts have consistently held that the Legislature has the right to devise  
and implement the methods and means for discharging its responsibility under Article IX.

1 *McGowan, supra*, 148 Wn.2d 278, 293; *Tunstall, supra*, 141 Wn.2d 201, 223; *Seattle Sch. Dist.*,  
2 *supra*, 90 Wn.2d 476, 519-20; *Sch. Dist. Alliance, supra*, 149 Wn. App. 241, 266. The order  
3 requested by Petitioners would violate the letter and spirit of these decisions, effectively replacing  
4 the Legislature's duly enacted "means" of implementing reform with Petitioners' preferred, but  
5 invalid "cost study" method.

6 The inappropriateness of the remedy under Washington law is amplified by its invalidity  
7 as a scientific approach to addressing the need to improve student performance. Expert analysis  
8 in-state and nationwide confirms that increased funding levels do not lead to better outcomes  
9 for students. Similarly, there is no provable connection between poor performance by students  
10 and allegedly inadequate funding and the field of "costing out" methodologies is scientifically  
11 incapable of yielding useful data and conclusions on these issues. Finally, the experiences in  
12 other states that have undergone court-ordered increases in funding demonstrate that the desired  
13 end—improved student performance—has simply not occurred. All that has occurred is that the  
14 spending of tax payer resources is substantially increased.

15 **I. Lay Opinion Testimony About the Adequacy of Current State Funding for Basic**  
16 **Education Is Inadmissible.**

17 During trial, witnesses employed by the school districts and currently or formerly  
18 employed by, or affiliated with, State agencies may be asked to express opinions about whether or  
19 not the State "adequately provides" or "amply provides" or "sufficiently funds" basic education.  
20 These opinions constitute impermissible legal conclusions. None of these witnesses is an expert  
21 disclosed as such under the rules of evidence, even though the witness may have worked in a  
22 financial, executive or managerial position. As non-experts, the admissibility of their opinions is  
23 governed by ER 701, which provides:

24 **RULE 701. OPINION TESTIMONY BY LAY**  
25 **WITNESSES**

26 If the witness is not testifying as an expert, the witness' testimony in the  
form of opinions or inferences is limited to those opinions or inferences which are  
(a) rationally based on the perception of the witness, (b) helpful to a clear



1 understanding of the witness' testimony or the determination of a fact in issue, and  
2 (c) not based on scientific, technical, or other specialized knowledge within the  
scope of rule 702.

3 The opinions of lay witnesses about whether they believe the State is, or is not, making ample  
4 provision for the education of a school district's students, or for Washington's students generally  
5 are, in effect, legal conclusions about the liability issue this Court must decide. They are not  
6 "rationally based" on personal knowledge, are not helpful on an issue that is really for this Court  
7 to decide and are "expert" opinions, not factual ones. Such opinions are improper for experts and  
8 non-experts alike. *See Wash. State Physicians Ins. Exch. & Ass'n v. Fison's Corp.*, 122 Wn.2d  
9 299, 858 P.2d 1054 (1993).

10 Respondent also anticipates that Petitioners will attempt to introduce out-of-court  
11 statements by former and current Washington legislators and executive officials. Legislators and  
12 past executive officials are not, however, agents of the State, and statements by current executive  
13 officers are admissible only to the extent they fall within the specific confines of that official's  
14 authority.

15 Out-of-court statements made by legislators are not admissible as admissions of the State  
16 because legislators are not, generally speaking, agents of the State. *See North Coast Air Services,*  
17 *Ltd. v. Grumman Corp.*, 111 Wn.2d, 315, 326-27, 759 P.2d 405 (1988); *Wilmot Kaiser Alum. and*  
18 *Chem. Corp.*, 118 Wn.2d 45, 64, 821 P.2d 18 (1991). There can be no dispute that when  
19 legislators discuss pending legislation, debate bills and give public addresses that they are  
20 speaking on their own behalf and expressing the views of themselves or their constituents. *See,*  
21 *e.g., Bennett v. Yoshina*, 98 F. Supp. 2d 1139 (D. Hawaii 2000) (legislators speak for the State  
22 through bills passed by the legislature and at all other times speak only for themselves). Were the  
23 rule otherwise, then any comment made by a legislator—even statements directly contradicting  
24 established state policies or regarding an area in which that legislator possessed no particular  
25 expertise—could be considered a binding admission by the State. Such a rule would be  
26 untenable. *See, e.g., Cook v. Mississippi Dep't of Human Services*, 2004 WL 1834596 (5th Cir.

1 2004) (state senator's comment that promotion at Department was racially motivated ruled  
2 inadmissible hearsay because legislature's only connection with Department was broad  
3 "oversight" authority). Consequently, any out-of-court statements made by legislators cannot be  
4 admitted because such comments constitute inadmissible hearsay.

5 Similarly, out-of-court statements made by former executive officials must be considered  
6 hearsay. No state branch, agency or specific State officials are parties to this case. In  
7 Washington, an official speaks for the government only if that individual has explicit authority  
8 from a department head or supervising officer to speak on behalf of the government or agency, or  
9 the authority to make such a statement may be reasonably inferred from the duties of the speaker's  
10 office. *Lockwood v. AC&S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (1987). Clearly, when a former  
11 executive is no longer affiliated with a department or agency, that individual no longer has  
12 explicit or implied authority to speak on its behalf. This is true even if the official possessed such  
13 authority during his/her prior employment. *See, e.g., Montgomery v. Kitsap County*, 2008 WL  
14 4682628 (9th Cir. 2008) (patrol chief's authority to speak for county regarding employee's  
15 termination ended with chief's retirement). Since former officials lack the necessary authority to  
16 speak on behalf of the government, any out-of-court statement made by such individuals is not  
17 admissible.

18 Statements made by current executives may be admissible, but only to the extent that the  
19 proffered statement is within that official's scope of authority. *Lockwood v. AC&S, Inc.*, 109  
20 Wn.2d 235, 744 P.2d 605 (1987). It is not enough that a particular individual is employed by a  
21 given agency or department. Rather, the party offering the statement must establish that the  
22 individual involved possessed the authority to make the statement and that the subject of the  
23 comment is within that official's area of expertise. If not, the out-of-court statement at issue is no  
24 more admissible than a comment made by a legislator in the course of his/her political duties or  
25 any other citizen or resident of the state. Thus, even if Petitioners attempt to introduce out-of-  
26

1 court statements based solely on an individual's employment with a certain agency or committee,  
2 that affiliation, in and of itself, cannot overcome the hearsay rule.

3 Even as to statements and testimony from former or current state employees and officials  
4 that is admissible, such statements and testimony are not binding on the state of Washington.  
5 *State v. Knighten*, 109 Wn.2d 896, 748 P.2d 1118, 1122 (1988); *see also In re J.F.*, 109 Wn. App.  
6 718, 37 P.3d 1227, 1235 (2001). Absent substantial corroboration, verbal "admissions" of a party  
7 are not sufficient to sustain a vital issue of fact. *Harris v. Turner*, 1 Wn. App. 1023, 466 P.2d 202  
8 (1970). Any such statements are subject to contradiction by other evidence. *Amrine v. Murray*,  
9 28 Wn. App. 650, 626 P.2d 24, 28 (1981).

#### 10 IV. CONCLUSION

11 In 1978, the Washington Supreme Court held that the terms of Article IX, section 1, of the  
12 state constitution mean and require that the Legislature define, fully fund and periodically reform  
13 a program of basic education for Washington's public K-12 schools. The Supreme Court also  
14 held, in 1978 and in subsequent decisions, that the Legislature has the right to determine the  
15 means of fulfilling those Article IX duties.

16 Petitioners filed this case in January of 2007. In the ensuing two-and-one-half years, the  
17 Legislature has continued its process of improving public K-12 education—a process begun well  
18 before Petitioners brought this case. Legislation enacted in 2009 continues to carry out the  
19 "means" that the Legislature has chosen to define, fully fund and reform basic education. That  
20 legislation—HB 2261—effectively terminates whatever claims Petitioners may have had when  
21 they initiated this case.

22 Petitioners bear the burden of proving beyond reasonable doubt that the current and  
23 anticipated funding of K-12 schools is unconstitutional. For the reasons stated more fully above,  
24 they cannot meet this burden. Even if they could do so, the remedy requested is both contrary to  
25  
26

1 Washington law and would be a waste of time and resources. The Court should dismiss  
2 Petitioners' case with prejudice.

3 DATED this 24<sup>th</sup> day of August, 2009.

4 ROBERT M. MCKENNA  
5 Attorney General

6 

7 WILLIAM G. CLARK, WSBA #9234  
8 CARRIE L. BASHAW, WSBA #20253  
9 Assistant Attorneys General  
10 Attorneys for Respondent  
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1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record  
3 on the date below as follows:

4 ☒ Hand delivered by Jennifer Eng

5 I certify under penalty of perjury under the laws of the state of Washington that the  
6 foregoing is true and correct.

7 DATED this 24<sup>th</sup> day of August, 2009, at Seattle, Washington.

8   
9 AGNES ROCHE



## SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own  
behalf and on behalf of KELSEY & CARTER  
MCCLEARY, their two children in Washington's  
public schools; ROBERT & PATTY VENEMA, on their  
own behalf and on behalf of HALIE & ROBBIE  
VENEMA, their two children in Washington's public  
schools; and NETWORK FOR EXCELLENCE IN  
WASHINGTON SCHOOLS ("NEWS"), a state-wide  
coalition of community groups, public school  
districts, and education organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

*Honorable John P. Erlick*

No. 07-2-02323-2 SEA

PETITIONERS' TRIAL BRIEF

## TABLE OF CONTENTS

I. SUMMARY .....	3
II. BACKGROUND .....	5
A. Article IX, §1.....	5
B. The Importance Of Education To Our Democracy.....	6
C. The Petitioners.....	7
D. The 13 “Focus” School Districts.....	7
E. This Suit’s Procedural History / Prior Proceedings.....	8
III. OVERVIEW OF TRIAL .....	11
A. “Paramount”, “Ample” & “All” Mean What They Say.....	11
1. The Meaning Of “Paramount”.....	11
2. The Meaning Of “Ample”. .....	12
3. The Meaning Of “All”. .....	13
B. The Basic “Education” Mandated By Article IX, §1.....	14
C. The State Is Currently Failing To Amply Provide All Washington Children With The Above Constitutionally Required Education. ....	18
1. The State Does Not Fund The Actual Cost Of Running The State’s Public Schools.....	18
2. Even With The Additional Local Funds Many School Districts Are Able To Cobble Together, The State’s Public Schools Are <u>Still</u> Failing To Equip Our State’s Public School Students With The Knowledge And Skills That The State Has Determined All Children In Our State Need. ....	19
a. The State’s Own Student Achievement Tests Show Too Many Students Are Failing. ....	20
b. Dropout Rates Show Too Many Students Are Failing. ....	20
c. The Achievement Gaps Show That Even More Minority And Poor Children Are Disproportionately Failing. ....	21
3. The State’s Attempt To Exclude Evidence Confirming The State’s Failures Should Be Rejected.....	21
4. Petitioners Are Not Required To Prove <u>Facts</u> Beyond A Reasonable Doubt – Instead The Civil Preponderance Of The Evidence Standard Applies. ....	22
D. The State Should Be Ordered To Take Prompt Action To Cure Its Continuing Constitutional Violation. ....	22
1. ESHB 2261 Does Not Cure The State’s Current Constitutional Violation. ....	23
2. The Fourth Part Of The Remedy Petitioners Request Is Narrowly Tailored To Not Encroach On The Legislative Sphere. ....	24
IV. CONCLUSION.....	24

Petitioners submit this trial brief to provide an overview of their fundamental claims in the upcoming August 31 trial, the four-part remedy they seek, and their response to the defenses that the State has thus far indicated it will be offering at that trial to excuse its conduct.

Pursuant to this Court's direction at the pre-trial conference, Petitioners will also submit an outline for proposed Findings Of Fact And Conclusions Of Law on Friday, August 28.

For the Court's convenience in this case, Petitioners also attach a copy of the Amended Petition in this case that also includes the corresponding admission/denial/counter-allegation in the State's Amended Answer printed after each paragraph of that Amended Petition ("Combined Petition & Answer").

## I. SUMMARY

The Washington Constitution mandates in plain and direct terms that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders...." Article IX, §1.

Over 30 years ago, the Washington Supreme Court held that the Respondent State was violating that constitutional duty. *Seattle School District v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978).

That Supreme Court ruling 30 years ago specified the following with respect to the "*minimum* of education that is constitutionally required" by Article IX, §1:

[T]he State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the market place of ideas. Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding. The constitutional right to have the State "make ample provision for the education of all (resident) children" would be hollow indeed if the

1 possessor of the right could not compete adequately in our open political  
2 system, in the labor market, or in the market place of ideas.... The  
3 effective teaching ... of these essential skills make up the *minimum* of the  
4 education that is constitutionally required.

5 *Seattle School District v. State*, 90 Wn.2d at 517-18 (***bold italics in original***).

6 That Supreme Court ruling 30 years ago ordered the Respondent State to cure its  
7 Constitutional violation by (1) defining additional substantive content for the above-described  
8 “basic education”, (2) defining a “program of basic education” to provide that substantive  
9 content to all Washington children, and (3) provide the State’s school districts with stable and  
10 dependable State funds that are fully sufficient to provide all children with the above described  
11 education. That Supreme Court ruling 30 years ago expressly held that it was unconstitutional  
12 for the State’s public school system to rely on local levies to fund any part of the above  
13 described education mandated by Article IX, §1.

14 The Respondent State eventually complied with the first part of the Washington  
15 Supreme Court’s order – adopting the four numbered provisions of House Bill 1209 and the  
16 State’s Essential Academic Learning Requirements to further define the substantive content of  
17 the “*minimum* of education that is constitutionally required” by Article IX, §1.

18 Over the past 30 years, the Respondent State has conducted countless studies, task  
19 forces, commissions, and work groups to make recommendations about complying with the  
20 second part of the Supreme Court’s order – recommendations that largely sit on State shelves  
21 pending another study, task force, commission, or work group.

22 And, over 30 years after the Supreme Court’s ruling against the Respondent State, the  
23 State is still failing to provide the State’s school districts with stable and dependable State funds  
24 that are fully sufficient to provide all children in our State with the “*minimum* of education”  
25 that is substantively specified in the Supreme Court’s *Seattle School District* ruling, the four  
26 numbered provisions of House Bill 1209, and the State’s Essential Academic Learning  
Requirements. Instead, the State’s public school system is still failing to provide that

1 substantive education to all Washington students. And the State's public school system is still  
2 relying upon local levies to fund a significant part of that (failing) education.

3 30 years is long enough. An entire generation of our State's citizens have passed  
4 through Washington's public schools in those 30 years. Despite the promising talk and good  
5 intentions of many State officials over the course of those 30 years, the Respondent State's  
6 compliance with its paramount duty under our State Constitution remains a mirage – something  
7 that is always 4 or 5 years and “just one more study” down the road.

8 This trial will prove at least two sad truths. 30 years after our Supreme Court's *Seattle*  
9 *School District* ruling, the Respondent State of Washington has yet to comply with its  
10 paramount duty under the Constitution of Washington. And our State's students – especially  
11 those in low income families or minority populations – are the ones suffering the consequences  
12 of the Respondent State's continuing constitutional violation.

## 13 14 II. BACKGROUND

### 15 A. Article IX, §1.

16 This case begins and ends with Article IX, §1 of our State Constitution, which mandates  
17 “It is the paramount duty of the state to make ample provision for the education of all children  
18 residing within its borders....”

19 That education duty is the only duty that is the State's paramount duty. As our State  
20 Supreme Court explained over 30 years ago:

21 Careful examination of our constitution reveals that the framers declared  
22 only once in the entire document that a specified function was the State's  
23 paramount duty. That singular declaration is found in Constitution  
24 Article IX, §1. Undoubtedly, the imperative wording was intentional.

25 *Seattle School District v. State*, 90 Wn.2d at 510-11.  
26



1 No other State Constitution imposes a higher education duty. Washington's  
2 Constitution is unique. As our State Supreme Court also explained over 30 years ago, "No  
3 other state has placed education on so high a pedestal". 90 Wn.2d at 511.

4 Our State Supreme Court further held over 30 years ago that the paramount  
5 constitutional duty imposed upon the State by Article IX, §1 grants Washington's public school  
6 children a paramount constitutional right – holding that "all children residing within the borders  
7 of the State possess a 'right', arising from the constitutionally imposed 'duty' of the State, to  
8 have the State make ample provision for their education", and that "since the 'duty' is  
9 characterized as paramount the correlative 'right' has equal stature." . 90 Wn.2d at 511-512.

10 And our State Supreme Court likewise confirmed over 30 years ago that Article IX, §1  
11 "is mandatory and imposes a judicially enforceable affirmative duty" upon the State. 90 Wn.2d  
12 at 482 (underline added); accord *Brown v. State*, 155 Wn.2d 254, 258 (2005) (Article IX, §1 "is  
13 substantive and enforceable" in the courts") (underline added).

14 **B. The Importance Of Education To Our Democracy.**

15 The State's answer to the Petitioners' original Petition in this case admits the  
16 fundamental fact that "A healthy democracy depends on educated citizens." As its "Paramount  
17 Duty" report explained almost 25 years ago:

18 Simply stated, this country relies upon an educated populace for its very  
19 existence. The security and well-being of each citizen depend upon the  
20 informed participation of each other. Concerns over the maintenance of this  
21 nation's place in world affairs, as important as they are, pale in the light of the  
22 realization that without an educated citizenry it cannot survive as a democracy.  
23 It was this vision of the utility of education the framers of the Constitution had  
24 in mind when they identified it as the state's paramount duty.<sup>1</sup>

25 The evidence at trial will confirm this fundamental importance of an educated citizenry to our  
26 State's broad, populist democracy.

<sup>1</sup> *The Paramount Duty, Report of the Washington State Temporary Committee on Educational Policies, Structure and Management (January 1985).*

1 **C. The Petitioners.**

2 Three Petitioners bring this case: the McCleary family, the Venema family, and the  
3 Network for Excellence in Washington Schools (“NEWS”).

4 Petitioners Matt and Stephanie McCleary are citizens, voters, and taxpayers living in  
5 Jefferson County, Washington. Their two children, Carter and Kelsey, attend our State’s public  
6 schools.

7 Stephanie was 13 when our Supreme Court issued its *Seattle School District* ruling  
8 against the Respondent State. A generation later, her daughter Kelsey was 13 when this suit  
9 was filed.

10 Petitioners Robert and Patty Venema are citizens, voters, and taxpayers living in  
11 Snohomish County, Washington. Their two children, Robbie and Halie, attend our State’s  
12 public schools.

13 Patty was in high school when our Supreme Court issued its *Seattle School District*  
14 ruling against the Respondent State. A generation later, her daughter Halie was in high school  
15 when this suit was filed.

16 NEWS is a non-profit corporation made up of more than 70 community groups, school  
17 districts, and education organizations across Washington.<sup>2</sup> Many of the educators and  
18 community leaders in NEWS have devoted their careers since the Supreme Court’s *Seattle*  
19 *School District* ruling working on the front lines of education in our State.

20 **D. The 13 “Focus” School Districts.**

21 Counsel for the Petitioners and the Respondent State previously agreed that it was not  
22 practical to conduct detailed discovery into each of the State’s 295 school districts. (There were  
23 296 school districts when this suit was filed – but one has gone insolvent while this suit’s been  
24 pending.)

25  
26 <sup>2</sup> A current list of NEWS members is posted on the NEWS website at  
[http://www.waschoolexcellence.org/about\\_us/news\\_members](http://www.waschoolexcellence.org/about_us/news_members).

1 They therefore agreed to limit the number of school districts they would focus on  
2 individually by having each side select 10 school districts as potential candidates. When  
3 counsel simultaneously exchanged each other's list of 10, it turned out that the State and  
4 Petitioners had both put the Yakima and Colville school districts on their lists – producing a  
5 combined list of 18. Counsel then conferred to determine if that list of 18 could be narrowed  
6 down even more – which resulted in the following 13 as being potential “focus districts” for use  
7 as part of this case (in alphabetical order):

- 8 1. Battle Ground School District (Clark County)
- 9 2. Bethel School District (Pierce County)
- 10 3. Chimacum School District (Jefferson County)
- 11 4. Clover Park School District (Pierce County)
- 12 5. Colville School District (Stevens County)
- 13 6. Edmonds School District (Snohomish County)
- 14 7. Issaquah School District (King County)
- 15 8. Moses Lake School District (Grant County)
- 16 9. Mount Adams School District (Yakima County)
- 17 10. Renton School District (King County)
- 18 11. Royal School District (Grant County)
- 19 12. Sunnyside School District (Yakima County)
- 20 13. Yakima School District (Yakima County)

21  
22 **E. This Suit's Procedural History / Prior Proceedings**

23 Petitioners filed this suit in January 2007. They seek the following four-part remedy to  
24 uphold and enforce Article IX, §1 of our State Constitution:

- 25 1. A declaratory judgment that the words “paramount”, “ample” and “all” in  
26 Article IX, §1 mean what they say. Paramount, ample, and all.

2. A declaratory judgment that the basic “education” mandated by Article IX, §1 is currently defined in our State by (1) the previously quoted ruling in the Supreme Court’s *Seattle School District* decision, (2) the further substantive content enacted in the four numbered provisions of House Bill 1209 [codified as the four numbered provisions of §.210 of the Basic Education Act], and (3) the State’s Essential Academic Learning Requirements (sometimes called the “EALRs”).
3. A declaratory judgment that the State is not currently complying with its paramount constitutional duty to amply provide that education to all children residing within the State’s borders.
4. An order consistent with the above declaratory judgment rulings, that requires the Respondent State to promptly establish (1) the actual dollar cost of amply providing all Washington children with the education mandated by those rulings, and (2) how the State will fully fund that actual dollar cost with stable and dependable State sources.

Because Petitioners believed that some or all of the four above-stated remedies could be determined as a matter of law, they filed a motion for summary judgment in March 2007.<sup>3</sup> The Respondent State opposed Petitioners’ motion, arguing among other things that the four above-stated remedies raised issues of fact. The Respondent State also responded by arguing that it should be granted summary judgment.

This Court denied all requests for an adjudication short of trial, and denied Petitioners’ request for reconsideration.

The parties continued their efforts to streamline this case by participating in an September 21, 2007 status conference with this Court concerning discovery and the trial schedule. At that conference, this Court continued the trial from its original setting to March 2, 2009. To narrow the upcoming discovery, Petitioners agreed to file an Amended Petition focusing the case on the above four issues disputed in the summary judgment proceedings.

Petitioners filed their Amended Petition on December 6, 2007, and the Respondent State filed its Answer to that Amended Petition on December 31, 2007. However, after reviewing that Answer, Petitioners were concerned that it did not “straightforwardly and non-evasively

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<sup>3</sup> *Petitioners are providing the Court with a briefing book containing all the summary judgment briefing filed by the parties, including briefs filed in connection with the Petitioners’ motion for reconsideration.*

1 specify which of the allegations in the Amended Petition are (and are not) disputed by the State  
2 in this case.”<sup>4</sup> Counsel for the Respondent State agreed to amend the State’s Answer to comply  
3 with the Civil Rules.<sup>5</sup>

4 Petitioners concerns were not alleviated by the Respondent State’s proposed Amended  
5 Answer to the Amended Petition. Petitioners counsel therefore sent another email asking the  
6 Respondent State’s counsel to reconsider specific paragraphs that (1) did not make it clear what  
7 the State was admitting or denying, (2) appeared to deny true statements, and (3) were not  
8 straightforward admissions or denials. After devoting what the State’s counsel explained was  
9 “a lot of time to evaluate [Petitioners’] concerns”, counsel for the State amended the State’s  
10 Amended Answer slightly before its filing, but affirmed that the revised pleading accurately  
11 reflected the State’s litigation positions:

12 As a preliminary matter, I believe the majority of your comments reflect  
13 differences between our styles of pleading matters, rather than  
14 compliance or non-compliance with CR’s 8 and 11.<sup>6</sup>

15 Discovery commenced in earnest after the amended pleadings were filed. Together, the  
16 parties deposed over 65 witnesses and exchanged thousands of paper and electronic documents.  
17 Trial was postponed two additional times to accommodate discovery and the Court’s schedule.  
18 However, discovery has demonstrated, and the August 31, 2009 trial will confirm, that  
19 Petitioners are entitled to the four declaratory judgments first sought more than 2 years ago.  
20  
21  
22  
23  
24

25 <sup>4</sup> This quoted email exchange is attached.

26 <sup>5</sup> Id.

<sup>6</sup> This quoted email exchange is also attached.



1  
2  
3 **III. OVERVIEW OF TRIAL**

4 **A. "Paramount", "Ample" & "All" Mean What They Say.**

5 **1. The Meaning Of "Paramount".**

6 Petitioners contend in this suit that:

7 "Paramount" means paramount. As used in Article IX, §1, the  
8 word "paramount" means "having the highest rank that is superior  
9 to all others". As used in Article IX, §1, the word "paramount" is  
10 not a mere synonym of "important", but rather means "superior in  
11 rank above all others – preeminent, supreme, and more important  
than all other things concerned." Article IX, §1 accordingly  
requires the Respondent State to make the State's ample provision  
for the education of all Washington children the State's first and  
highest priority above all other programs and operations.<sup>7</sup>

12 The Respondent State denies that interpretation.<sup>8</sup> It appears that the State will likely  
13 argue at trial that education is instead just one of its many "important" obligations, and point to  
14 the current economic downturn as a reason for now granting the State even broader flexibility to  
15 limit its funding for the State's many important programs – including public education.

16 But our State Supreme Court rejected that same argument by the Respondent State in the  
17 *Seattle School District* case. Amidst the oil embargos and stagflation of the late 1970s, the  
18 Respondent State argued that the legislature could not be required to treat education as  
19 "paramount" because its legislature had too many other pressing demands in that time of  
20 economic crisis that also needed attention. Our Supreme Court rejected that argument, holding  
21 that the State's paramount duty under Article IX does not expand and contract with the market:

22 We do not doubt that ever increasing demands upon the Legislature by  
23 state agencies, departments and institutions have reached near crisis  
24 proportions. However, none has the mandatory constitutional recognition  
25 found in Const. art. 9, §§1 and 2. **Though the crisis is recognized, it  
does not change the constitutional duty of the court or of the  
Legislature.**

26 <sup>7</sup> *Amended Petition at ¶108(a). See the attached Combined Petition & Answer.*

<sup>8</sup> *See the attached Combined Petition & Answer.*

1 *Seattle School District v. State*, 90 Wn.2d at 526 (emphasis added).

2 Economic downturns do not lessen the costs or educational responsibilities of our State's  
3 public schools. Education is the front line. Public schools cannot send children home for  
4 furlough days. And the demands on our State's public schools increase – not decrease – in a  
5 recession as educators struggle to, for example, maintain student focus and engagement at times  
6 of uncertainty and personal loss. As one of the leading members of the State's most recent  
7 education study (the Joint Task Force On Basic Education Finance) has repeatedly stated,  
8 paramount means paramount, and even in the current economic downturn the State has plenty of  
9 money for education – it just chooses to instead spend much of it on other, non-paramount  
10 things.

## 11 **2. The Meaning Of "Ample".**

12 Petitioners contend in this suit that:

13 "Ample" means ample. As used in Article IX, §1, the word  
14 "ample" means "more than adequate" or "considerably more than  
15 adequate or sufficient." Article IX, §1 accordingly requires the  
16 Respondent State's provision for the education of all Washington  
17 children to be more than merely "adequate" or "sufficient" to  
18 provide the Constitutionally required education to all  
Washington's children, without any supplementation or  
backfilling by local levies, PTA fundraisers, private donations, or  
other non State sources.<sup>9</sup>

19 The Respondent State denies that interpretation.<sup>10</sup> It appears that the State will likely  
20 argue at trial that ample simply means whatever the State's array of program funding formulas  
21 happens to produce in any given year – despite the fact that the State's program formula funding  
22 approach does not cover today's actual costs of running the State's public schools, therefore  
23 leaving school districts dependent upon other sources such as local levies to fund basics.

24 One of the major flaws in the State's argument is that our State Supreme Court has  
25 already declared that the State's dependence on such local levy funding is unconstitutional. As

26 <sup>9</sup> *Amended Petition at ¶108(b). See the attached Combined Petition & Answer.*

<sup>10</sup> *See the attached Combined Petition & Answer.*

1 the *Seattle School District* Court explained, that State cannot satisfy its paramount education  
2 duty under our State Constitution with the use of local levies because levy funding is “wholly  
3 dependent on the whim of the electorate and is then available on a temporary basis,” and  
4 because “[s]chool boards frequently submit[] inadequate levy requests based upon ‘practical  
5 politics,’ rather than need, to ensure passage” of those levy requests. 90 Wn.2d at 525 & 524.

6 The evidence at trial will also confirm another major flaw in the State’s argument – for  
7 school districts simply are not able to raise enough money locally to provide all of their public  
8 school students with the education needed in today’s world.

9 **3. The Meaning Of “All”.**

10 Petitioners contend in this suit that:

11 “All” means all. As used in Article IX, §1, the word “all” means  
12 “every” or “each and every one of”. Article IX, §1 accordingly  
13 requires the Respondent State to make ample provision for the  
14 education of every child residing in our State, not just those  
children who are in convenient, popular, advantaged, or politically  
expedient subsets of our State’s children.<sup>11</sup>

15 The Respondent State denies that interpretation.<sup>12</sup> It appears that the State will likely  
16 argue at trial that all can’t mean all because the experts it retained for this lawsuit opine that  
17 many kids – disproportionately those from lower income families and minority segments of our  
18 State’s population – simply can’t reach the minimum educational standards that our State has  
19 established for our public school students. In essence, they argue that such children are  
20 prisoners of their socio-economic status, and that children such as those born into minority and  
21 low income families with relatively uneducated parents simply cannot be expected to achieve  
22 much in school.

23 But the witnesses at trial who work on the front lines of education in our State will  
24 testify to the contrary. They will confirm that there are no throw-away kids in our State. And  
25 they will confirm that, with appropriate resources, all kids can learn the knowledge and skills

26 <sup>11</sup> *Amended Petition at ¶108(c). See the attached Combined Petition & Answer.*

<sup>12</sup> *See the attached Combined Petition & Answer.*

1 specified in the minimum educational standards our State has set for our public school students.  
2 And as our Supreme Court reiterated in its *Seattle School District* decision, “[t]he effective  
3 teaching... of these essential skills make up the *minimum* of the education that is  
4 constitutionally required.” 90 Wn.2d at 518.

5 **B. The Basic “Education” Mandated By Article IX, §1.**

6 Petitioners contend in this suit that:

7 The basic “education” mandated by the Washington State  
8 Constitution is a solid constitutional floor below which the State  
9 cannot fall. At the very minimum, Article IX, §1 requires the  
10 Respondent State to provide every child residing in our State the  
11 full, comprehensive, well rounded education described by the  
12 Washington Supreme Court in the *Seattle School District v. State*  
13 ruling attached as Tab 2. The substantive content of that  
14 Constitutionally mandated basic education currently includes the  
15 substantive content specified in the four numbered provisions of  
16 §.210 of the Basic Education Act (RCW 28A.150.210(1) (4))  
17 [House Bill 1209] and the Respondent State’s eight [now nine]  
18 Essential Academic Learning Requirements (EALRs).<sup>13</sup>

19 The Respondent State denies that interpretation.<sup>14</sup>

20 But that denial ignores what our State Supreme Court has held. The Supreme Court  
21 ruling against the Respondent State over 30 years ago has already established the *minimum*  
22 “education” constitutionally required by Article IX, §1. That ruling held that:

23 [T]he State’s constitutional duty goes beyond mere reading, writing and  
24 arithmetic. It also embraces broad educational opportunities needed in  
25 the contemporary setting to equip our children for their role as citizens  
26 and as potential competitors in today’s market as well as in the market  
27 place of ideas. Education plays a critical role in a free society. It must  
28 prepare our children to participate intelligently and effectively in our  
29 open political system to ensure that system’s survival. It must prepare  
30 them to exercise their First Amendment freedoms both as sources and  
31 receivers of information; and, it must prepare them to be able to inquire,  
32 to study, to evaluate and to gain maturity and understanding. The  
33 constitutional right to have the State “make ample provision for the  
34 education of all (resident) children” would be hollow indeed if the

35 <sup>13</sup> *Amended Petition at ¶108(d). See the attached Combined Petition & Answer.*

<sup>14</sup> *See the attached Combined Petition & Answer.*

1 possessor of the right could not compete adequately in our open political  
2 system, in the labor market, or in the market place of ideas.... The  
3 effective teaching ... of these essential skills make up the *minimum* of the  
4 education that is constitutionally required.

5 *Seattle School District v. State*, 90 Wn.2d at 517-18 (***bold italics in original***).

6 The first two parts of that Supreme Court ruling then specified that the Respondent State  
7 was to (1) define additional substantive content for the above described “basic education”, and  
8 (2) define a “program of basic education” to provide that substantive content to all Washington  
9 children. The language of that decision, moreover, repeatedly made it clear that a “basic  
10 education” and a “basic program” of education to deliver it are not synonyms. Instead, they are  
11 two distinct terms. E.g., 90 Wn.2d at 482 (“The Legislature must act to carry out its  
12 constitutional duty by defining and giving substantive content to ‘basic education’ and a basic  
13 program of education”) (underline added), at 519 (noting that in 1978 the legislature had not yet  
14 passed legislation “defining or giving substantive content to ‘basic education’ or a basic  
15 program of education. Thus, the Legislature must hereafter act to comply with its constitutional  
16 duty by defining and giving substantive meaning to them.”) (underlines added), and at 537  
17 (“We have great faith in the Legislature and its ability to define ‘basic education’ and a basic  
18 program of education”) (underline added).

19 And with respect to the first part of the Supreme Court’s above ruling – i.e, that the State  
20 define additional substantive content for the above described “basic education” – the State did  
21 precisely that when it enacted the four numbered provisions of House Bill 1209. Witnesses at  
22 trial will confirm that fact and the substantive significance of the State’s 1993 enactment of that  
23 education reform bill.

24 State officers and frontline educators will confirm that House Bill 1209 was a paradigm  
25 shift in our State’s education system, taking Washington from a “seat-time” or “time-served”  
26 system to a student “performance-based” system. As that enactment expressly stated, it was  
passed to improve student achievement by “[e]stablishing what is expected of students, with



standards set at internationally competitive levels”, in order to ensure our State’s education system would “keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.” House Bill 1209, Section 1.

Consistent with the first part of the Supreme Court’s above ruling that the State define additional substantive content for the *minimum* “basic education” described by our Supreme Court, House Bill 1209 specified the following as the knowledge and skills that all Washington students should be equipped with in the State’s public schools:

- (1) Read with comprehension, write with skill, and communicate effectively and responsibly in a variety of ways and settings;
- (2) Know and apply the core concepts and principles of mathematics; social, physical and life sciences; civics and history; geography; arts; health; and fitness;
- (3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.

House Bill 1209, Section 101. Echoing the Supreme Court’s above quoted ruling, House Bill 1209 declared that the knowledge and skills specified in those four numbered provisions are in fact essential “to become responsible citizens, to contribute to their own economic well being and to that of their families and communities, and to enjoy productive and satisfying lives.” House Bill 1209, Section 101.

The testimony at trial will confirm that the knowledge and skills specified in the four numbered provisions of House Bill 1209 (now codified as amended in §.210(1)-(4) of the Basic Education Act) are in fact the substantive content of what drives education in our State’s public schools.

The testimony will also confirm that the State has further defined the substantive content of the knowledge and skills all Washington students need in today’s world when the State adopted Essential Academic Learning Requirements for the following nine core subjects:

1 (1) reading, (2) mathematics, (3) science, (4) writing, (5) communication, (6) social studies,  
2 (7) the arts, (8) health and fitness, and (9) educational technology. As the testimony at trial will  
3 confirm, the State's Essential Academic Learning Requirements further define the substantive  
4 content of the education that the Respondent State has determined all children must have to be  
5 able to compete in today's economy and meaningfully participate in our democracy.

6 It appears that the Respondent State will take the position at trial that the "education"  
7 mandated by Article IX, §1 does not relate to any substantive knowledge or skills at all.  
8 Instead, the State appears to take the position that the term "education" in Article IX, §1 refers  
9 to nothing more than whatever "program" the State's funding formulas happen to specify for any  
10 given year. But that ignores the State Supreme Court's substantive description of the "essential  
11 skills" that are included in the *minimum* "education" that Article IX, §1 requires. And it  
12 ignores the State's own specification of the substantive knowledge and skills all kids need to  
13 compete in today's economy and meaningfully participate in our democracy. And it ignores the  
14 State's own adoption of the Essential Academic Learning Requirements that specify the  
15 substantive knowledge and skills that the State has determined all Washington children need to  
16 be equipped with to compete in today's economy and meaningfully participate in our  
17 democracy.

18 As one of the leading members of the State's recent Joint Task Force On Basic  
19 Education Finance has explained, defining "education" as a program funding formula  
20 effectively reduces our Constitution to a tautology:

21 As we discussed earlier in this deposition, today the definition is the set  
22 of funding formulas, so it's a tautology. If you fund the funding formulas,  
23 you've met the definition of basic education. It has nothing to do with  
student learning.<sup>15</sup>

24 Our State Constitution, however, is not so meaningless. The evidence in this case will confirm  
25 that the "education" mandated by Article IX, §1 has substantive meaning. And that substantive

26 <sup>15</sup> *Deposition of Ross Hunter, 71:25-72:6.*

1 meaning is the substantive, educational content specified by (1) the previously quoted *Seattle*  
2 *School District* ruling describing the “essential skills” that are the *minimum* “education”  
3 Article IX, §1 requires, (2) the four numbered provisions of House Bill 1209 [now  
4 RCW 28A.150.210(1)-(4)], and (3) the State’s nine Essential Academic Learning Requirements  
5 (EALRs).

6 **C. The State Is Currently Failing To Amply Provide All Washington Children With**  
7 **The Above Constitutionally Required Education.**

8 The evidence at trial will confirm that the Respondent State is not providing all  
9 Washington children with a meaningful or effective opportunity to learn and be equipped with  
10 the above education mandated by our Constitution.

11 It is important to note that this case is not about the extent of the State’s failure. This  
12 case does not seek a money judgment or a ruling on any particular dollar amount.

13 Instead, this case is about the existence of the State’s failure. This case presents a  
14 straight-forward yes-or-no question: As we sit here today, is the State complying with its  
15 paramount duty to make ample provision for the education of all Washington students? The  
16 evidence at trial will confirm that the answer to that question is no.

17 **1. The State Does Not Fund The Actual Cost Of Running The State’s Public Schools.**

18 The evidence at trial will confirm that the State’s “program” funding formulas are an  
19 amalgam of equations with little or no relationship to today’s world or the actual cost of running  
20 the State’s public schools. The State’s own education officials will testify that the State’s  
21 formulas and equations are based instead primarily on a decades-old historical snapshots.

22 When the State first drafted those equations and formulas, the State did not  
23 independently determine what resources were in fact required to educate all children in the  
24 State’s public schools. Instead, the State simply took a snapshot of the resources that each  
25 Washington school district had cobbled together in the late 1970’s with a combination of State  
26 and local funds, and set the State’s initial education funding equations and formulas based on

1 the district's dollar amounts at that time. Those equations and formulas were then subjected to  
2 periodic increases based on a generic inflation factor.

3 It is doubtful this system was ever constitutional. As the Supreme Court explained in its  
4 *Seattle School District* ruling, that cobbled together system was not based on actual educational  
5 need. Because school districts were forced to raise significant funds through local levies,  
6 funding was instead based on political practicalities:

7 As is true for most districts, the [Seattle School] District did not base its  
8 levy request upon actual need. Rather, it sought a lesser amount  
believing it might attract voter approval.

9 90 Wn.2d at 485. The Supreme Court further explained that 40% of the State's students lived in  
10 similar "levy loss districts" at that time – districts that were unable to pass levies to raised the  
11 funds actually needed run the State's public schools. 90 Wn.2d at 485.

12 The evidence at trial will show that the gap between school districts' actual expenses  
13 and the State's funding equations/formulas is similarly dire today. The evidence will confirm  
14 that the State in fact does not fund the actual cost of running the State's public schools. And the  
15 evidence will confirm that districts are required to come up with an ever increasing share of  
16 their education funding from local levies and other sources – which is leaving them without the  
17 personnel, textbooks, facilities, classrooms, computers, and other resources required to in fact  
18 provide all children with the substantive education mandated by Article IX, §1.

19 Based on this funding gap alone, the answer to the binary yes-or-no question of whether  
20 the State is complying with its paramount duty to amply provide for the education of all  
21 children is "no".

22 **2. Even With The Additional Local Funds Many School Districts Are Able To Cobble**  
23 **Together, The State's Public Schools Are Still Failing To Equip Our State's Public**  
24 **School Students With The Knowledge And Skills That The State Has Determined**  
**All Children In Our State Need.**

25 The evidence will show that even with the additional local funds many school districts  
26 are able to cobble together, the State's public schools are still failing to equip our State's public

1 school students with the knowledge and skills that the State has determined all children in our  
2 State need. For example, the evidence at trial will demonstrate at least the following facts:

3 ***a. The State's Own Student Achievement Tests Show Too Many Students Are***  
4 ***Failing.***

5 The evidence at trial will show that the Respondent State developed the Washington  
6 Assessment of Student Learning ("WASL") to measure the fundamental skills established by  
7 the State's previously-discussed Essential Academic Learning Requirements – and that this  
8 measurement by the Respondent State is one of the most rigorous and reliable assessments of  
9 student achievement in the country. Although the State is now replacing the WASL with a  
10 more "diagnostic" test that takes less time to administer, the evidence in this case has not  
11 disputed that the WASL test is a rigorous and reliable assessment of student achievement.

12 The State's Office of the Superintendent of Public Instruction (OSPI), moreover, assures  
13 the parents of our State's public school students that the State's new tests will not be easier:  
14 "The new tests are shorter to take, but will remain just as rigorous."<sup>16</sup> And OSPI states that the  
15 new tests "will continue to be valid and reliable."<sup>17</sup>

16 The evidence at trial will show that this testing by the Respondent State demonstrates  
17 that the State is failing its paramount education duty under Article IX, §1 miserably. For  
18 example, the Respondent State's own testing confirms that only about ¼ of our State's  
19 10<sup>th</sup> graders have the science knowledge and skills that the State has determined they need in  
20 today's society, and that only about ½ of them have the math knowledge and skills that the State  
21 has determined they need.

22 ***b. Dropout Rates Show Too Many Students Are Failing.***

23 The State's education failure is also demonstrated by the State's High School dropout  
24 rates. For example, the evidence at trial will show that about ¼ of all ninth graders in our State

25 <sup>16</sup> The referenced OSPI webpage is located at <http://www.k12.wa.us/assessment/StateTesting/default.aspx>. A printout of the webpage is attached to this brief.

26 <sup>17</sup> The referenced OSPI webpage is located at <http://www.k12.wa.us/assessment/StateTesting/FAQ.aspx>. A printout of the webpage is attached to this brief.



1 fail to graduate from high school with their peers, and that too many students in our State never  
2 obtain a high school diploma. Moreover, the evidence will also show that of those who do  
3 receive a diploma each year, thousands of students still are not earning a diploma backed by  
4 actual knowledge and skills they need to succeed.

5 ***c. The Achievement Gaps Show That Even More Minority And Poor Children Are***  
6 ***Disproportionately Failing.***

7 The State's education failure is also demonstrated by the achievement gap in  
8 Washington that leaves minority and poor children in our State even further behind than their  
9 white, middle-class peers. The evidence will show that the children most in need of an ample  
10 education are instead being served by the State the worst.

11 **3. The State's Attempt To Exclude Evidence Confirming The State's Failures Should**  
12 **Be Rejected.**

13 The State has submitted generic, general objections to all of the documents on  
14 Petitioners' ER 904 disclosure. In addition to specific objections (as is required by ER 904), the  
15 State generally stated that it generally objects to:

- 16 • "each and every document contained in Petitioners' ER 904 notice that contain  
17 statements or opinions that the K-12 public education system in the state of  
18 Washington is in violation of the Washington Constitution, Article 9, sections 1  
19 or 2",
- 20 • "each and every document contained in Petitioners' ER 904 notice that contain  
21 statements alleging that Washington state students do not receive an adequate  
22 public education or that they do not meet Washington public education 'goals' or  
23 'standards'",
- 24 • "each and every document written or purported to be written by employees of the  
25 Executive or Legislative branches or by Washington state legislator(s) or  
26 subgroups of Washington state legislators that contain statements about what the  
'State' or 'legislature' believes or intends regarding Respondent's K-12 public  
education policies", and
- "to otherwise admissible documents that also contain inadmissible hearsay which  
must be redacted before admitting such documents."

Such boilerplate, general objections are improper under ER 904. "To allow general,  
blanket objections to all designated documents would defeat the purpose of the rule [ER 904],

1 which is to expedite the admission of evidence.” *Hendrickson v. King County*, 101 Wn. App.  
2 258, 268, 2 P.3d 1006 (2000). General objections do not comply with ER 904(c). *Id.*

3 The State’s attempt to exclude such broad categories of evidence should be rejected. It  
4 is understandable why the State would want to keep the Court from hearing evidence, for  
5 example, “that Washington State students do not receive an adequate public education or that  
6 they do not meet Washington public education ‘goals’ or ‘standards’”. But the State’s not liking  
7 the evidence of its failures does not make that evidence inadmissible. If anything, the State’s  
8 only legitimate argument might be that its objections go to the weight (rather than the  
9 admissibility) of the Petitioners’ evidence.

10 **4. Petitioners Are Not Required To Prove Facts Beyond A Reasonable Doubt –**  
11 **Instead The Civil Preponderance Of The Evidence Standard Applies.**

12 Because this case raises constitutional questions, the State may argue at trial that the  
13 Petitioners must prove all factual and legal issues “beyond a reasonable doubt”. However, the  
14 question here is whether the State has failed to comply with a specific constitutional mandate –  
15 not whether a specific statute is unconstitutional. When a Court is “concerned with legislative  
16 compliance with a specific constitutional mandate . . . the normal civil burden of proof, *i.e.*,  
17 preponderance of the evidence, applies.” *Seattle School District*, 90 Wn.2d at 528.

18 **D. The State Should Be Ordered To Take Prompt Action To Cure Its Continuing**  
19 **Constitutional Violation.**

20 The State has had more than 30 years to comply with its paramount constitutional duty  
21 to amply provide all Washington children with the substantive education mandated by  
22 Article IX, §1. The evidence at trial, however, will confirm that the State still has not done so.

23 The final part of the four-part remedy Petitioners seek is therefore a Court order that  
24 requires the Respondent State to promptly (1) establish the actual dollar cost of amply providing  
25 all Washington children with the education mandated by this Court’s declaratory judgment  
26 rulings on the proper interpretation of Article IX, §1, and (2) establish how the State will fully

1 fund that actual dollar cost with stable and dependable State sources as required 30 years ago by  
2 the Supreme Court's *Seattle School District v. State* ruling.

3 It appears that the Respondent State will make two primary objections to this fourth part  
4 of the Petitioners' request for relief: (1) that relief is unnecessary because the recently passed  
5 ESHB 2261 cures the State's constitutional violation, and/or (2) the Court should not second-  
6 guess the legislative branch. Neither argument, however, creates a valid defense.

7 **1. ESHB 2261 Does Not Cure The State's Current Constitutional Violation.**

8 The 2009 legislature passed ESHB 2261 last session as a follow up to many of the  
9 State's educational failings confirmed by the State's Joint Task Force On Basic Education  
10 Finance. The Governor vetoes some provisions and signed the remainder into law. But  
11 ESHB 2261, as signed, does not cure the State's constitutional violation.

12 One reason is that ESHB 2261 provides no actual education resources or funding to  
13 address the State's current violation. Instead, ESHB 2261 describes in broad terms the type of  
14 public schools the past 2009 legislature hopes future legislatures might fund in upcoming  
15 legislative sessions (ESHB 2261, section 106), and creates a new slate of workgroups to do yet  
16 more studying of education finance issues (ESHB 2261, section 112). While expressing a hope  
17 that future legislatures would someday increase education funding, the 2009 legislature did the  
18 opposite and cut funding of the State's public schools.

19 Another reason that ESHB 2261 does not cure the State's current constitutional violation  
20 is that the hopes expressed in ESHB 2261 about what future legislatures should do fail to  
21 eliminate the need for a Constitutional ruling. However laudable the 2009 legislature's good  
22 intentions might be, as a matter of Washington law, those good intentions are not binding on  
23 any future legislature:

24 No legislature can enact a statute that prevents a future legislature from  
25 exercising its law-making power. That which a prior legislature has  
26 enacted, the current legislature can amend or repeal. Like all previous  
legislatures, it is limited only by the constitutions.

1 *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007).

2 Therefore, the only mechanism for resolving the current, live dispute between the Petitioners  
3 and the Respondent State as to what Article IX, §1 requires is a Court ruling.

4 **2. The Fourth Part Of The Remedy Petitioners Request Is Narrowly Tailored To Not**  
5 **Encroach On The Legislative Sphere.**

6 Petitioners are not asking the Court to dictate a particular amount of funding to be  
7 appropriated. Nor are Petitioners asking the Court to dictate how the legislature must determine  
8 the actual dollar cost of amply providing all Washington children with the education mandated  
9 by Article IX, §1. Instead, Petitioners are asking the Court to simply order the State to take  
10 some specific, first steps towards complying with Article IX, §1 by ordering the Respondent  
11 State to promptly (1) establish the actual dollar cost of amply providing all Washington children  
12 with the education mandated by this Court's declaratory judgment rulings on the proper  
13 interpretation of Article IX, §1, and (2) establish how the State will fully fund that actual dollar  
14 cost with stable and dependable State sources as required 30 years ago by the Supreme Court's  
15 *Seattle School District v. State* ruling. Unless those first steps are taken, the State's compliance  
16 with its paramount duty under our State Constitution will continue to be a mirage that is always  
17 4 or 5 years and "just one more study" down the road.

18 **IV. CONCLUSION**

19 The evidence at trial will confirm that the State has yet to comply with its paramount  
20 duty under our State Constitution to amply provide for the education of all Washington children.  
21 To end that over 30 year history of noncompliance and delay, the Petitioners will establish that  
22 this Court should enter the following four-part remedy to uphold and enforce Article IX, §1 of  
23 our State Constitution:

- 24 1. A declaratory judgment that the words "paramount", "ample" and "all" in  
25 Article IX, §1 mean what they say. Paramount. Ample. All.  
26 2. A declaratory judgment that the basic "education" mandated by Article IX, §1  
is currently defined in Washington by (1) the previously quoted ruling in the  
Supreme Court's *Seattle School District* decision, (2) the further substantive

1 content enacted in the four numbered provisions of House Bill 1209 [codified  
2 as the four numbered provisions of §.210 of the Basic Education Act], and  
3 (3) the State's Essential Academic Learning Requirements.

- 4 3. A declaratory judgment that the State is not currently complying with its  
5 paramount constitutional duty to amply provide that education to all children  
6 residing within the State's borders.
- 7 4. An order consistent with the above declaratory judgment rulings, that requires  
8 the Respondent State to promptly establish (1) the actual dollar cost of amply  
9 providing all Washington children with the education mandated by those  
10 rulings, and (2) how the State will fully fund that actual dollar cost with stable  
11 and dependable State sources.

12 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of August, 2009.

13 FOSTER PEPPER PLLC

14 

15 Thomas F. Ahearne, WSBA No. 14844  
16 Edmund W. Robb, WSBA No. 35948  
17 Attorneys for Petitioners



# Exhibit A

**Edmund Robb**

---

**From:** Clark, Bill (ATG) [BillC2@ATG.WA.GOV]  
**Sent:** Wednesday, May 28, 2008 10:24 AM  
**To:** Thomas Ahearne  
**Cc:** Edmund Robb; Williams, Aaron (ATG)  
**Subject:** RE: McCleary v. State

Tom:

Thanks for following up on our short conversation earlier this month. I have been reviewing our Answer and, while I do not believe the current pleading contains evasive statements or responses that are not straightforward, I have been working on an amended document. Unfortunately, other case needs have prevented me from completing it.

Due to commitments, including a trip out-of-state, I anticipate providing you with an Amended Answer and proposed Stipulation the week of June 16. I agree that a conference about discovery is appropriate. Maybe we could set something up for June 19 or 20 or during the following week.

I'll be sure to include Edmund on our communications. Aaron Williams typically monitors things for me on the basic education case.

Call or email back with any questions. Thanks again for contacting me.

---

**From:** Thomas Ahearne [mailto:ahearne@foster.com]  
**Sent:** Tuesday, May 27, 2008 1:36 PM  
**To:** Clark, Bill (ATG)  
**Cc:** Edmund Robb  
**Subject:** McCleary v. State

Bill –

This follows up on our brief in-person conversation three weeks ago (May 6) about the State's Answer. I had understood that you were going to re-examine that pleading to make sure the statements asserted in that Answer are really the positions the State has decided to take in this case. I think the efficient resolution of this litigation (as well as rules 8 & 11) require the State's Answer to straightforwardly and non-evasively specify which of the allegations in the Amended Petition are (and are not) disputed by the State in this case. As I noted when we spoke, if you decide the State's Answer should be amended to accurately assert the State's position or to comply with the civil rules, I'm happy to stipulate to your being granted leave to file rather than forcing you to spend the time and expense of preparing a motion. Please just let me know.

Although I understand that trial is not until March 2009 and that discovery has yet to start proceeding, I would like to meet with you once we get the admitted and denied allegations in this case locked down by an amended Answer so we can coordinate a reasonable discovery plan/schedule to try to avoid an end-of-the-year scramble.

Thanks.

Tom

(P.S. - As with this email, I'd like Edmund Robb cc'd on our emails in this case as a backstop for when I'm out of the office or not linked to email. In that same vein, is there someone at your shop you'd like me to cc as well on our emails? Thanks.)

# Exhibit B

**Edmund Robb**

---

**From:** Clark, Bill (ATG) [BillC2@ATG.WA.GOV]  
**Sent:** Tuesday, July 15, 2008 4:16 PM  
**To:** Thomas Ahearne  
**Cc:** Williams, Aaron (ATG); Edmund Robb  
**Subject:** RE: State's [proposed] Amended Answer in McCleary

Tom:

Thanks again for your email of July 7 about our proposed Amended Answer. I have taken a lot of time to evaluate your concerns, which you grouped into three general categories. The response below tracks those categories and the individual paragraphs at issue in the order you have presented them.

As a preliminary matter, I believe the majority of your comments reflect differences between our styles of pleading matters, rather than compliance or non-compliance with CR's 8 and 11. As your email confirms, many of the statements in your Amended Petition were pleaded, not as facts (the dictionary definition of "averments"), but as what the Petitioners contend the facts to be or to signify. It reads like your 2007 Summary judgment pleadings. This is likely due to the fact that the idea of amending the Petition was represented to the Court in last September's teleconference as a means of narrowing the allegations of the Petition to the limited case (unlike plaintiffs in other states) that you had recently argued on Summary Judgment and intended to continue to present at trial. In answering the Amended Petition we focused on the facts alleged, not on what the Petitioners contend. We also strove to make clear that we do not necessarily agree that the four issues you present are the only issues in the case or are issues properly characterized. We were not trying to evade, to deny true statements or to obfuscate what we were admitting or denying.

That being said, here is the response to your specific comments:

1. Paragraphs 5 and 6 of the proposed Answer are fully responsive to Petitioners' jurisdictional and venue allegations in your paragraphs 5 and 8. They make clear that jurisdiction over the liability issues you posit and venue are admitted, but that we deny jurisdiction when it comes to the remedy you request.
2. Paragraph 49 of the proposed Answer illustrates the distinction between facts and contentions made above. Our denial of paragraph 83 relates to the fact alleged: that the State fails to comply with Article IX. That Petitioners contend it to be a fact does not change the substantive response. However, to moot the point I can revise to indicate we don't dispute that you contend the facts that we deny.

Paragraph 26 of the proposed Answer, however, does not deny that you contend something. It states categorically that we deny Petitioners' contentions about the meaning and significance of RCW 28A.150.210. Similarly, paragraphs 68 through 80 of the Amended Petition are not "true statements" but are lumped into a broad category that Petitioners have labeled "state's excuses." Paragraph 46 of the proposed Answer states that we deny that the State's positions in the case constitute "excuses", that we deny Petitioners' attempts to characterize our positions, factual and legal, in this case and that we deny the facts alleged in these paragraphs. Finally, our answer to paragraph 89, a denial that the State has not complied with Article IX and a denial of the fourth issue, as Petitioners allege it, is complete as is.



As to paragraph 2 of the Amended Petition, we disagree that it states three basic "facts." It contains argument about the appropriate remedy in the case. We have correctly answered that the paragraph contains legal argument and opinions and acknowledge that petitioners have tried to confine the issues in the case to the four described in this paragraph. Our answer clarifies that we don't agree that these four issues are exclusive, that you have described our positions about them (and other issues) correctly or that the underlying facts alleged are true and correct. This answers the question of whether the parties disagree about those issues.

Finally, as to our proposed paragraphs in response to Amended Petition paragraphs 4 and 41, we believe our answer – that the State complies with Washington law, including Article IX – confirms the disagreement with your clients' interpretation of substantive law and the allegation that the State is required to follow Washington law. We do not agree with your assessment that our Answer to these paragraphs is equivocal or evasive.

3. The last series of paragraphs you take issue with is easily resolved. Frankly, I simply don't share the belief that there is a substantive difference between admitting that something appears to be correct and admitting that something is correct. The inconsistency you observe in paragraphs that say it one way versus another illustrate my point. However, to get us over this dispute I am willing to change "appears" to "is" in all cited paragraphs except for 72 and 82. There are no paragraphs in our proposed Answer with those numbers.

Tom, I suspect that we both have devoted more time to evaluating the proposed Answer than the email exchange would evidence. I have taken your concerns to heart, even though I continue to disagree with some of them. I will forward a revised version with the changes prompted by our emails incorporated. I will also forward a proposed Stipulation that does nothing more than obviate the requirement for court approval.

I hope this resolves our differences over the Amended Answer.

---

**From:** Thomas Ahearne [mailto:ahearne@foster.com]  
**Sent:** Monday, July 07, 2008 6:22 PM  
**To:** Clark, Bill (ATG)  
**Cc:** Williams, Aaron (ATG); Edmund Robb  
**Subject:** State's [proposed] Amended Answer in McCleary

Bill -

Here's the email you'd asked for outlining why I had said I think the State's proposed Amended Answer fails to comply with the Civil Rules. I apologize for not getting this to you as soon as I had hoped. As I noted in our discovery conference, I'm happy to stipulate to your filing an Amended Answer instead of forcing you to incur the time and expense of drafting a motion. (I am presuming that that stipulation would not also add a stipulation that whatever Amended Answer you end up deciding to go with fully complies with the rules.)

In any event, my comment to you was based on my reading of Rule 8(b) ("A party...shall admit or deny the averments upon which the adverse party relies. .... Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder."), Rule 11(a)(4) ("The signature ... constitutes a certificate by that party or attorney that ... the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief"), and Rule 1 (the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every

action"). Petitioners will rely on the Amended Answer filed by the State complying with those rules.

In that light, my points fall into three basic categories, which I summarize below in order of convenience as I type this email instead of being listed in any particular order of importance:

**Paragraphs in the State's [currently proposed] Amended Answer that do not make it clear what the State is admitting or denying.**

Paragraph 5 of the Amended Petition makes a simple one-sentence allegation: "This Court has jurisdiction to issue a declaration that the State is, or is not, complying with the State's Constitutional duties." The corresponding paragraph 5 in the State's [currently proposed] Amended Answer provides a six-line discussion that concludes with a denial. But then the State's fifth affirmative defense admits the Court has jurisdiction to issue a declaration that the State is, or is not, complying with its constitutional duties. So, is the State admitting or denying that "This Court has jurisdiction to issue a declaration that the State is, or is not, complying with the State's Constitutional duties"?

As another example, paragraph 8 of the Amended Petition makes a simple one-sentence allegation: "Venue for this action properly lies in this Court." The State's Answer to that allegation in the original Petition was "Respondent admits the allegations contained in paragraphs 7 & 8 of the Petition". The corresponding paragraph in the State's [currently proposed] Amended Answer (paragraph 6 & its incorporated-by-reference paragraph 5) provides a discussion about venue that leaves it unclear as to whether the State is now admitting or denying that "Venue for this action properly lies in this Court."

In short: The Civil Rules require the Amended Answer filed by the State to make it clear what the State is admitting and what it is denying. As the above illustrates, I do not think the State's [currently proposed] Amended Answer does that.

**Paragraphs in the State's [currently proposed] Amended Answer that deny true statements.**

Paragraph 83 of the Amended Petition makes the following one-sentence allegation: "With respect to the third issue raised in this case, the Petitioners accordingly contend that the Respondent State currently is not fully complying with its legal duty under Article IX, §1 of our State Constitution." The corresponding paragraph 49 in the State's [currently proposed] Amended Answer asserts: "Respondent denies the allegations in paragraph 83 of the Amended Petition." Is the State REALLY denying that Petitioners are contending what the Petitioners say they are contending? The State's [currently proposed] Amended Answer similarly denies that the Petitioners are contending what Petitioners say they are contending in paragraphs 26, 68, 70, 74, 76, 78, 80, and 89 of the Petitioners' Amended Petition.

Paragraph 2 of the Amended Petition asserts at least three basic facts - namely, that "the Petitioners and Respondent State disagree on the legal meaning of the words 'paramount', 'ample', and 'all' as used in Article IX, §1 of our State Constitution", that "the Petitioners and Respondent State disagree on the current legal definition of the basic 'education' mandated by Article IX, §1", and that "the Petitioners and Respondent State disagree on the following yes or no question: 'Is the Respondent State currently fully complying with its legal duty under Article IX, §1?'" The corresponding paragraph 1 in the State's [currently proposed] Amended Answer, however, expressly denies those facts. Is the State REALLY denying that the Petitioners and State disagree on these three points?

Similarly, paragraph 4 of the Amended Petition alleges that "The Respondent State of Washington is required to comply with the Constitution of Washington" - but the corresponding paragraph 4 in the State's [currently proposed] Amended Answer denies that allegation. Is the State REALLY denying that is required to comply with the Constitution of Washington?

Similarly, paragraph 41 of the Amended Petition alleges that "The Respondent State disagrees with the Petitioners' interpretation of the basic education mandated by Article IX, §1 of our State Constitution" - but the corresponding paragraph 33 in the State's [currently proposed] Amended Answer denies that allegation. Is the State REALLY denying that it disagrees with the Petitioners' interpretation?

In short: The Civil Rules allow the Amended Answer filed by the State to deny an allegation only if the State in truth does deny that allegation. As the above illustrates, I do not think the State's [currently proposed] Amended Answer does that.

**Paragraphs in the State's [currently proposed] Amended Answer that give an evasive dodge instead of a straightforward admission or denial.**

Several paragraphs of the State's [currently proposed] Amended Answer fail to straightforwardly admit or deny paragraphs in the Amended Petition by "admitting" what is NOT alleged and simultaneously ignoring what IS alleged. For example, paragraphs 82, 72, 57, and 56 of the State's [currently proposed] Amended Answer.

Other paragraphs fail to straightforwardly admit or deny statements in the Amended Petition by answering that those statements "appear" to be correct instead of straightforwardly admitting or denying if they are in fact correct. For example, paragraph 11 of the Amended Petition states in full: "Article IX, §1 of the Washington State Constitution states: 'It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.' A copy of Article IX, §1 is attached as Tab 1." The corresponding paragraph 9 in the State's [currently proposed] Amended Answer asserts: "Answering paragraph 11 of the Amended Petition, respondent admits that the quoted passage **appears** to be taken from Article IX, Section 1 of the Washington state constitution and that a copy of the quoted language is contained in Tab 1 to the Amended Petition. Respondent **denies** each and every other allegation in paragraph 11." Paragraphs 7, 8, 16, 21, 22, 23, 51, and 53 of the State's [currently proposed] Amended Answer similarly use that "appears" dodge - which contrasts sharply with the straightforward admission in paragraph 18 of State's [currently proposed] Amended Answer, which straightforwardly states: "Answering paragraph 25 of the Amended Petition, respondent admits that the quoted language **is** excerpted from the Washington Supreme Court opinion in *Seattle School District v. State*".

In short: The Civil Rules require the Amended Answer filed by the State to provide a straightforward admission or denial instead of a dodge. As the above illustrates, I do not think the State's [currently proposed] Amended Answer does that.

***Please at least consider my above points - for I believe it would help allow this suit to be resolved in the more efficient manner envisioned by the Superior Court's Civil Rules if the Amended Answer filed by the State complies with those Rules. I will accept that the State position is that the Amended Answer it proposes after considering this email does fully comply with Rules 8, 11, and 1. Please let me know when that Amended Answer is ready for filing, and as I noted at the beginning of this email, I will stipulate to its being filed instead of your having to waste time and money preparing motion papers as well.***

Thanks.

Tom

# Exhibit C


[A-Z Index](#) [Print Version](#)
[Search](#)
[Home](#) [Certification](#) [Programs](#) [Support/Operations](#) [Teaching/Learning](#) [Assessment](#) [Finance/IGrants](#) [Research/Reports](#)

## Assessment Overview

### State Testing

*State Testing*

#### Overview

#### FAQ

#### Timelines/Calendar

#### Scale Scores

#### Test Questions

#### Performance Levels

#### WASL

#### WAAS-Special Ed.

#### Classroom-Based Assessments

#### Teacher Resource Tool

#### Assessment

#### Coordinators

#### Data/Reports

## Testing Students in Washington State

Beginning in the 2009-10 school year, two new tests replace the Washington Assessment of Student Learning (WASL):

### Measurements of Students Progress (MSP)

The name of the MSP, given to students in grades 3-8, conveys the goal of the test: to measure student progress.

### High School Proficiency Exam (HSPE)

This test measures the proficiency of students in high school and serves as the state's exit exam. Students must pass this assessment or a state-approved alternative in reading and writing in order to be eligible to graduate.

The new tests are shorter to take, but will remain just as rigorous. The new tests are also available online over the next few years, starting with reading and math in grades 6-8 in spring 2010.

About one percent of students participate in the Washington Alternate Assessment System (WAAS), a challenging program for students in special education.

Washington Assessment of Student Learning (WASL) was given as the state assessment from spring 1997 to summer 2009. It was replaced by the MSP and HSPE.

View the Rollout Schedule for Online Testing. Also, view a state testing history timeline to see the years each subject was phased in at each grade level.

### Need help?

[The Move to Online State Testing](#)

[FAQs About State Testing](#)

[Test Resources](#)

[Washington State Report Card](#)

[Request Your Child's Test](#)

Contact OSPI  
(360) 725-6032  
[StateTesting@k12.wa.us](mailto:StateTesting@k12.wa.us)



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[A-Z Index](#) [Print Version](#)
[Search](#)
[Home](#) [Certification](#) [Programs](#) [Support/Operations](#) [Teaching/Learning](#) [Assessment](#) [Finance/iGrants](#) [Research/Reports](#)

## Assessment Overview

### State Testing

*State Testing*

#### Overview

#### FAQ

#### Timelines/Calendar

#### Scale Scores

#### Test Questions

#### Performance Levels

#### WASL

#### WAAS-Special Ed.

#### Classroom-Based Assessments

#### Teacher Resource Tool

#### Assessment

#### Coordinators

#### Data/Reports

## Measurements of Student Progress (Grades 3-8)

Beginning in the 2009-10 school year, the Washington Assessment of Student Learning (WASL) will be replaced by two new tests: the grades 3-8 Measurements of Student Progress (MSP) and the [High School Proficiency Exam](#) (HSPE).

The MSP name conveys the goal of the test: to measure student progress. State testing should never be the sole judge of a student's academic skills and knowledge. A student's entire performance should always be considered.

The MSP will be shorter to take than the WASL and will be moved online over the next few years. Reading, math and science will take just one day each instead of two with the WASL. For now, writing will still take two days.

Beginning in spring 2010, about 25 percent of the state's students in grades 6-8 will take the MSP via computer in reading and math. See OSPI's [online testing schedule](#).

The testing window for the grades 3-8 state test will be moved to May in spring 2010 (paper-and-pencil testing, May 12-28; online testing May 3-June 4). The longer testing window for online is to ensure schools have enough time to rotate students through computer stations or labs.

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# Exhibit D


[A-Z Index](#) [Print Version](#)
[Search](#)
[Home](#) [Certification](#) [Programs](#) [Support/Operations](#) [Teaching/Learning](#) [Assessment](#) [Finance/iGrants](#) [Research/Reports](#)

## Assessment Overview

### State Testing

*State Testing*
[Overview](#)
[FAQ](#)
[Timelines/Calendar](#)
[Scale Scores](#)
[Test Questions](#)
[Performance Levels](#)

### WASL

[Overview](#)
[See Your Child's Test](#)
[Teacher Resource Tool](#)

### WAAS-Special Ed.

[Classroom-Based Assessments](#)  
[Teacher Resource Tool](#)

### Assessment

[Coordinators](#)
[Data/Reports](#)

## Frequently Asked Questions about State Testing

Got a question about state testing? Check out some of the most frequently asked questions about the state's testing system. Still can't find the answer you need? Please e-mail [StateTesting@k12.wa.us](mailto:StateTesting@k12.wa.us)

1. [I heard the WASL is being replaced. Is there still state testing?](#)
2. [Why are we required to do state testing?](#)
3. [What are the new state tests called?](#)
4. [When do the new tests take effect?](#)
5. [Why are you replacing the WASL?](#)
6. [What is different about these tests compared to the WASL?](#)
7. [What is the schedule for online testing?](#)
8. [Doesn't shortening the tests make them easier?](#)
9. [Does my son or daughter still need to pass a state test to graduate from high school?](#)
10. [How will the new testing system affect students receiving special education services?](#)
11. [Won't replacing the tests cost more money?](#)
12. [What subjects are covered in our state tests?](#)
13. [What types of questions appear on state tests?](#)
14. [What makes our state tests different from other standardized tests?](#)
15. [Who writes our state testing questions?](#)
16. [What steps are taken to ensure that state testing questions do not contain any cultural bias?](#)
17. [Who scores our state tests?](#)
18. [How are student responses scored?](#)
19. [How are passing scores determined?](#)
20. [Are standards reset each year?](#)
21. [What is a good score on our state tests?](#)
22. [What steps are taken to make sure that the scoring of open-ended items is valid and reliable?](#)
23. [How are test results reported?](#)
24. [What happens if I refuse to have my child take state tests?](#)
25. [Can I request to view my student's test booklet?](#)
26. [Can I appeal my student's score after](#)

### Need help?

[The Move to Online State Testing](#)
[FAQs About State Testing](#)
[Test Resources](#)
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[StateTesting@k12.wa.us](mailto:StateTesting@k12.wa.us)

- looking at the test booklet?
27. How are test results used?
  28. Is a listing of school and/or district state testing scores available?
  29. What does it take for a student to do well on state testing?
  30. How do students with disabilities participate in state testing?
  31. How do students with limited English proficiency participate in state testing?
  32. Do private-school students or home-schooled students have to take state tests?

**Q:I heard the WASL is being replaced. Is there still state testing?**

A: Yes.

**Q:Why are we required to do state testing?**

A: Because of state and federal law.

Our state assessment system was implemented in response to the state's Education Reform Law of 1993, which required that the assessment system to:

- Test all public school students across the state, including students with disabilities and students with limited English proficiency
- Be administered annually in selected grades
- Measure performance based on the Essential Academic Learning Requirements (EALRs), the state's learning standards
- Report on the performance of individual students, schools and districts
- Serve as one basis of accountability for students, schools, and districts

Our state tests also fulfill the requirements of the federal No Child Left Behind (NCLB) Act. NCLB requires annual assessments in reading and math for students in grades 3-8 and high school. Students also must be tested annually in science in an elementary school grade, a middle school grade and a high school (10-12) grade. This requirement is fulfilled in Washington by testing students in grades 5, 8 and high school.

**Q:What are the new state tests called?**

A: The grades 3-8 tests are called the Measurements of Student Progress (MSP). The high school tests will be called the High School Proficiency Exam (HSPE). These tests are under development and will incorporate the state's academic learning requirements.

**Q:When do the new tests take effect?**

A: The Measurements of Student Progress (MSP) and the High School Proficiency Exam (HSPE) will first be given in spring 2010.

**Q:Why are you replacing the WASL?**

A: Superintendent Randy Dorn, who came into office in January 2009, believes the state assessment system should be a less complex and more responsive system of measuring students' progress. For more information, see our June 2009 press releases (June 11 and June 18).



**Q:What is different about these tests compared to the WASL?**

A: The tests are shorter and online versions will be phased in over the next few years.

**Q:What is the schedule for online testing?**

A: Beginning in spring 2010, about 25 percent of students in grades 6-8 will take reading and math online. The rest of the grades will be phased in during the next few years. See the complete [online testing schedule](#).

**Q:Doesn't shortening the tests make them easier?**

A: No. The entire testing system will be much more efficient, but the tests, still based on our state learning standards, will continue to be valid and reliable.

**Q:Does my son or daughter still need to pass a state test to graduate from high school?**

A: Yes. No matter what the state test is called, the [graduation requirements](#) that go along with it have not changed. If a student passed one or more content areas on the WASL, he/she would not have to take the HSPE in that specific subject. For example, a high school student in 2009 passes the reading WASL, but not the writing WASL. That student would need to take the writing HSPE but not the reading.

**Q:How will the new testing system affect students receiving special education services?**

A: Superintendent Randy Dorn has convened a work group to study and to recommend changes to the [Washington Alternate Assessment System](#) and other alternatives assessments for special needs students. For those students unable to test on a computer, a paper-and-pencil test will still be available.

**Q:Won't replacing the tests cost more money?**

A: No. We do expect some additional costs up front, but not over the life of the five-year assessment contract that went into effect in October 2008. School districts, however, should see savings in time and money in regards to administering the tests.

**Q:. What subjects are covered on our state tests?**

A: The MSP and HSPE are based on the state's learning standards contained in the [Essential Academic Learning Requirements](#) (EALRs). Students are tested in:

- Reading: Grades 3, 4, 5, 6, 7, 8 and 10
- Writing: Grades 4, 7 and 10
- Math: Grades 3, 4, 5, 6, 7, 8 and 10
- Science: Grades 5, 8 and 10

**Q:What types of questions appear on state tests?**

A: The MSP and HSPE tests are much shorter than the WASL and include multiple-choice and short-answer questions. Four-point essay questions have been eliminated on reading, math and science tests. This change allows students to show they are able to solve the problems, while not being scored on their writing ability on the math, reading and science tests.

**Q:What makes our state tests different from**

**other standardized tests?**

A: The MSP and HSPE are unlike more familiar standardized tests, which measure students' performance against other students. Our state tests measures students' performance against a set of learning standards, not against their peers. Think of the MSP/HSPE like the test you take to earn a driver's license. It doesn't matter what other drivers score, only what you scored and that you have the driving skills and knowledge of traffic laws to "meet the standard" and get a license.

**Q:Who writes our state testing questions?**

A: Washington educators helped build our state tests and continue to refine them. They review every question for content quality and its relation to the state's learning standards.

**Q:What steps are taken to ensure that our state testing questions do not contain cultural bias?**

A: Every state testing question goes through extensive analysis by a Bias and Cultural Fairness Committee of specially trained educators and community members before inclusion. Before any question is placed on a state test, each question goes through review to ensure there is no cultural bias in the exam. Each question also is given a trial run, or is piloted, with students to determine whether the question poses special difficulty for students from different backgrounds.

**Q:Who scores our state tests?**

A: Hundreds of people score our state tests. All scorers are monitored closely by Data Recognition Corporation (DRC), the state's testing operations contractor. State testing scorers must have, at a minimum, a four-year college degree. All scorers are monitored daily to ensure their scores meet criteria of accuracy and consistency set by Washington educators. Scorers who are unable to score according to these criteria are dismissed.

**Q:How are student responses scored?**

A: Reading, math and science: All one-point multiple-choice questions are machine scored. Short-answer questions that are worth two are scored by trained raters who use scoring guides defined by Washington educators. Writing: The same scoring guides are used every year for all of the writing questions. Scorers are trained to set aside their own personal opinions about what score a test should receive, so that student responses are scored consistently and according to the criteria determined by Washington educators and Data Recognition Corporation.

**Q:How are passing scores determined?**

A: This process is called "standard setting" because students must meet a certain performance standard to pass. Setting standards for the MSP and HSPE is a thoughtful and involved process incorporating the feedback of many people. First, a standard-setting panel for a state testing subject and grade level is convened. Members include teachers, parents and community members representing Washington's geographically and ethnically diverse population.

The panelists for each content area review "performance-level descriptors," which are the written descriptions of what students should know and be able to do in that subject and grade. They also look at the test itself to see how many points a student should earn on the test to meet the "performance-level descriptors." The panel's work is done in rounds. After the first round of deliberations, panelists discuss each others' perspectives and then conduct a second round of review. A third round is done before the panel, as a whole, makes final recommendations.

Next, an "articulation" committee is brought together to ensure the suggested standards relate sensibly to one another across the different grade levels. The articulation committee members represent standard-setting committee members from different subjects and grades. The articulation committee reviews the standard-setting committee's recommendations and can make its own set of recommendations.

Both the recommendations from the standard-setting panel and articulation committee are forwarded to the State Board of Education for review and adoption. Once the State Board of Education decides which recommendation to adopt, that is the performance a student must achieve in order to "meet standard" or pass the MSP and HSPE.

**Q:Are standards reset each year?**

A: No. Once the State Board of Education adopts a set of standards for a state test, the state carries that expected level of performance from year to year. Each year a new edition of the test is developed. Most of the questions on the test are new, but some appeared in subsequent years. The repeated items are "anchor" items that are used to link the performance on one year's edition of our state test to earlier editions of the test. This uses a procedure called "equating." By equating the current year's state test to previous state tests given in previous years, the performance standard can be maintained over time.

**Q:What is a good score on our state tests?**

A: A student's performance on the reading, math and science MSP and HSPE is reported using "scale scores." Scale scores are three-digit numbers that are used to place the student into one of four levels: Advanced (Level 4), Proficient (Level 3), Basic (Level 2) and Below Basic (Level 1). A scale score of 400 is assigned to a student who has just barely met the state standard; this score is at the lower end of Level 3. Students scoring in Level 4 are said to have exceeded the state standard. Students with scores in Level 1 or Level 2 have not met standard.

Students generally have to achieve a score that represents approximately 60 to 65 percent of the points possible on each test to pass. That score or above means they have met the required standard for proficiency in that particular subject.

**Q:What steps are taken to make sure that the scoring of open-ended items is valid and reliable?**

A: The Office of Superintendent of Public Instruction (OSPI) uses rigorous methods to ensure that the

scoring process yields valid and reliable results. Valid scoring means that a scorer assigns the same score to a student response as would be assigned by an expert panel of Washington educators. Reliable scoring means that different scorers consistently assign the same score to a student response.

The following quality control measures are used when open-ended questions are scored on the MSP and HSPE. Beginning in the 2009-10 school year, the MSP and HSPE reading, math and science no longer have long-answer, four-point questions. Only the writing tests have extended response questions:

- **Item-by-item scoring:** Teams of scorers are trained to score responses to a single open-ended state testing question and all responses to that question are scored by the team. Once all students' responses to that question have been scored, the team is trained to score a different test question. This process adds to the scoring consistency, as scorers need only keep a single scoring guide in mind as they score. This approach also protects against scorer biases that could come into play if entire test booklets were scored by a single scorer.
- **Double-scoring:** All writing responses in high school are scored twice to verify that scoring is consistent and aligned to the scoring rubrics.
- **Supervisors Reread Scored Student Work:** In addition to double-scoring, each scoring supervisor rereads an average of five percent of the papers from scorers under their supervision every day. If a supervisor discovers that a scorer begins to assign scores that do not match the scoring guidelines, the supervisor consults with the scoring director and together they retrain that scorer, using the original training materials. This on-the-spot checking helps keep the scoring consistent. If a scorer has drifted from the scoring guidelines, the scores he/she has recently-assigned are removed and those papers are reinserted into the queue to be rescored. Scorers who prove unable to score consistently after retraining are dismissed from scoring.
- **Blindly Inserted Validity Papers:** A "validity paper" is a student response that has been pre-approved by Washington content (reading, writing, math and science) specialists as being a clear example of a score point. Multiple validity papers are blindly inserted into a scorer's assignment of student responses to be scored. Scoring supervisors receive a daily report of how well scorers' decisions matched with the pre-determined score on the validity papers. Any variation from the scoring criteria is

addressed immediately.

- **Protocols to Handle Unique Responses:**

Scorers are trained to only assign a score to student responses that are consistent with the examples provided in training. If a scorer encounters a student response that is unique, novel or otherwise unfamiliar, the scorer seeks advice from the supervisor. If the response is new to the Supervisor, the Scoring Director intervenes. At this point, the Scoring Director can decide either that the response is merely a nuance of what is already described in the scoring rubric or that the response is truly unique. If the response is a nuance, all the scorers are notified and re-trained on that particular type of response; if the response is one that has not yet been encountered, OSPI content staff intervene and determine what score should be assigned, after which scorers are re-trained.

- **Communication between OSPI and the scoring contractor:** OSPI representatives are on site at Data Recognition Corporation facilities during training and scoring to monitor the quality processes and to address any content questions that may surface.

**Q:How are test results reported?**

A: Results are reported for individual students, schools, districts and the state according to four performance levels defined by the State Board of Education:

- **Level 4:** Advanced
- **Level 3:** Proficient
- **Level 2:** Basic
- **Level 1:** Below Basic

Every family of a student who takes a state test will receive a score report. Each school/district decides how families will receive this report (e.g. mail or parent/teacher conference). Check with your school or district to find out how you will receive your student's results. Students in grades 10, 11 and 12 who take a state test in the spring will get two score reports: One in early June for reading, writing and math, and a second report in September that includes the results from the science HSPE and a look at school, school district and state scores.

**Q:What happens if a parent refuses to have his/her child take a state test?**

A: A student in grades 3-8 who doesn't take a state test may miss out on having any learning issues identified sooner rather than later. These students also may miss out on the academic help paid for by the state and federal government; this help is often attached to an individual student test scores. High school students who do not take and pass a state assessment in reading and writing will not graduate.

**Q:Can a student's scored booklet be reviewed?**

A: Parents/Guardians may request to review their

child's test booklet. See [state guidelines and forms](#).

**Q:Can a parent/guardian appeal a student's score after looking at the test booklet?**

A: Parents/guardians may only appeal a score on a high school assessment that is required for graduation: WASL, HSPE, WAAS-DAW, WAAS-Portfolio or Collection of Evidence. A score appeal results in OSPI review of particular scoring errors, such as errors on open-ended items, incorrect score calculations, mistakes affecting erasures, test labeling, and lightly marked bubbles on multiple choice items. [Read the state guidelines](#). An appeal form will be provided when the parent/guardian reviews the test.

**Q:How are state test results used?**

• **Improvements in teaching and learning**

Parents, students, and educators use the results to:

- Follow student progress
- Identify strengths, weaknesses and gaps in curriculum and instruction
- Fine tune curriculum alignment with the statewide standards
- Identify students who may need additional help

**Note:** Your child's state testing results should not be the first time you know if your child is mastering the state's learning standards. In fact, many teachers now grade daily student work using the state's 1-4 scoring scale.

• **School and district accountability**

Under No Child Left Behind, the state reports on the [Adequate Yearly Progress](#) of students in schools and districts based on WASL results.

• **Student accountability**

Students are required to pass a state assessment in reading and writing as one [graduation requirement](#) for a high school diploma. Students are given multiple opportunities, if necessary, to pass the tests. Alternatives also are available for students who have tried the exam at least twice. Students also must meet local requirements for high school graduation (for example, completion of required coursework).

**Q:Is a listing of school and/or district state testing scores available?**

A: Yes. The state has an extensive Web site for the public to view all elements of state testing at our [Washington State Report Card](#).

**Q:What does it take for a student to do well on a state test?**

A: Students do well on state tests when they come to class regularly and do their schoolwork. It's also important for educators to use a curriculum that emphasizes the state academic standards and



regularly ask students to think, communicate and solve problems. "Drill-and-kill exercises" and fill-in-the-blank "test prep" a few weeks before taking the test aren't effective.

**Q:How do students receiving special education services or students with a Section 504 Plan participate in state tests?**

A: A student's IEP team or Section 504 Team must determine annually how a student with disabilities will participate in WASL in each subject scheduled for assessment. This information must be documented in the student's IEP and should be documented in the student's 504 Plan. The team may determine that the student can take their grade-level test with or without accommodations or may be eligible to participate in the Washington Alternate Assessment System. Guidelines to assist IEP Teams and 504 teams in making decisions regarding how each student will participate in state testing are available in the [Guidelines for Participation and Testing Accommodations for Special Populations in State Assessment Programs](#). For more information about the state's Alternate Assessment program, please email [waas@k12.wa.us](mailto:waas@k12.wa.us).

**Q:How do students who are English Language Learners (ELL) participate state testing?**

A: All students who are ELL must participate in all state testing scheduled for their grades regardless of the number of years they have been in the U.S. The only exception is students who are in their first year of enrollment in U.S. schools. These students are not required to participate in reading or writing tests, but must take the math and science exams. In addition to participating state testing, ELL students must take annually the [Washington Language Proficiency Test II \(WLPT-II\)](#) in reading, writing, speaking and listening.

**Q:Do private-school students or home-schooled students have to participate in state testing?**

A: No, private-school and home-schooled students are exempt from state testing. Some private and home-schooled students, however, do choose to take the exam. Home-schooled students who want a diploma from a Washington public high school diploma must complete all state and local graduation requirements.

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KING COUNTY  
SUPERIOR COURT CLERK  
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CASE NUMBER: 07-2-02323-2 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own  
behalf and on behalf of KELSEY & CARTER  
MCCLEARY, their two children in Washington's  
public schools; ROBERT & PATTY VENEMA, on their  
own behalf and on behalf of HALIE & ROBBIE  
VENEMA, their two children in Washington's public  
schools; and NETWORK FOR EXCELLENCE IN  
WASHINGTON SCHOOLS ("NEWS"), a state-wide  
coalition of community groups, public school  
districts, and education organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

*Honorable John Erlick*

No. 07-2-02323-2 SEA

*[PETITIONERS' PROPOSED]*  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

*[PROPOSED]* FINDINGS OF FACT & CONCLUSIONS OF LAW

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	4
II.	THE COURT’S FINDINGS OF FACTS AND CONCLUSIONS OF LAW .....	5
A.	<b>PRELIMINARY MATTERS: THE PARTIES, JURISDICTION, VENUE, &amp; BURDENS OF PROOF</b> .....	6
	(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof .....	6
	(i) <i>Short procedural history of this case</i> .....	6
	(ii) <i>The McCleary family</i> . ....	6
	(iii) <i>The Venema family</i> . ....	7
	(iv) <i>The Network for Excellence in Washington Schools (“NEWS”)</i> .....	7
	(b) Conclusions of Law Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof .....	20
B.	<b>GENERAL BACKGROUND: THE IMPORTANCE OF EDUCATION IN OUR STATE’S DEMOCRACY</b> .....	21
	(a) Findings of Fact Concerning the Importance of Education in our State’s Democracy .....	21
	(b) Conclusions of Law Concerning the Importance of Education in our Democracy .....	29
C.	<b>SPECIFIC BACKGROUND: ARTICLE IX, §1 OF THE WASHINGTON STATE CONSTITUTION</b> .....	32
	(a) Background Findings of Fact Concerning Article IX, §1 .....	32
	(b) Background Conclusions of Law Concerning Article IX, §1 .....	32
D.	<b>QUESTION #1 (DECLARATORY JUDGMENT): WHAT IS THE CORRECT INTERPRETATION OF “PARAMOUNT”, “AMPLE”, AND “ALL” IN ARTICLE IX, §1?</b> .....	33
	(a) Findings of Fact relating to the interpretation of “paramount”, “ample”, and “all” in Article IX, §1. ....	33
	(b) Conclusions of Law concerning the legal interpretation of the words “paramount”, “ample”, and “all” in Article IX, §1. ....	34
	(i) <i>Judicial branch’s duty to interpret words used in the State Constitution</i> .....	34

1	(ii)	"paramount" .....	35
2	(iii)	"ample" .....	36
3	(iv)	"all" .....	37
4	<b>E.</b>	<b>QUESTION #2 (DECLARATORY JUDGMENT): WHAT IS THE</b>	
5		<b>CURRENT LEGAL MEANING OF THE WORD "EDUCATION" IN</b>	
6		<b>ARTICLE IX, §1? .....</b>	<b>38</b>
7	(a)	Findings of Fact relating to the current legal	
8		meaning of the word "education" in Article IX, §1. ....	38
9	(i)	<i>First Milepost (1978): State Supreme Court</i>	
10		<i>establishes the <u>minimum</u> knowledge and skills</i>	
11		<i>encompassed by the term "education" in</i>	
12		<i>Article IX, §1 [a "basic education"].....</i>	<i>38</i>
13	(ii)	<i>Second Milepost (1993): State legislature enacts</i>	
14		<i>House Bill 1209, which specifies <u>additional</u></i>	
15		<i>substantive content <u>beyond</u> the "minimum"</i>	
16		<i>substance established by the State Supreme</i>	
17		<i>Court's 1978 ruling. ....</i>	<i>40</i>
18	(iii)	<i>Third Milepost: State adopts Essential Academic</i>	
19		<i>Learning Requirements based on House Bill 1209,</i>	
20		<i>which specify additional substantive content</i>	
21		<i>beyond the "minimum" substance established by</i>	
22		<i>the State Supreme Court's 1978 ruling .....</i>	<i>42</i>
23	(b)	Conclusions of Law relating to the current legal	
24		meaning of the word "education" in Article IX, §1. ....	43
25	(i)	<i>The <u>minimum</u> meaning of the word "education"</i>	
26		<i>established by the Washington Supreme Court. ....</i>	<i>43</i>
	(ii)	<i>The additional specification of basic knowledge</i>	
		<i>and skills added by the State legislature's</i>	
		<i>enactment of the four numbered provisions of</i>	
		<i>House Bill 1209. ....</i>	<i>45</i>
	(iii)	<i>The additional specification of basic knowledge</i>	
		<i>and skills added by the State's adoption of the</i>	
		<i>Washington's Essential Academic Learning</i>	
		<i>Requirements (EALRs). ....</i>	<i>46</i>
	(iv)	<i>Conclusion regarding the current legal meaning</i>	
		<i>of the word "education" in Article IX, §1 of the</i>	
		<i>Washington Constitution. ....</i>	<i>46</i>

<b>F.</b>	<b>QUESTION #3 (DECLARATORY JUDGMENT): IS THE RESPONDENT STATE CURRENTLY COMPLYING WITH ITS LEGAL DUTY UNDER THIS COURT'S INTERPRETATION OF THE LANGUAGE IN ARTICLE IX, §1?</b>	<b>47</b>
<b>(a)</b>	Findings of Fact relating to whether the State is currently complying with its legal duty under this Court's interpretation of the language in Article IX, §1	47
<b>(b)</b>	Conclusions of Law relating to whether the State is currently complying with its legal duty under this Court's interpretation of the language in Article IX, §1	50
<b>G.</b>	<b>QUESTION #4 (ENFORCEMENT ORDER): WHAT (IF ANY) ORDER SHOULD THIS COURT ENTER TO UPHOLD AND ENFORCE THE STATE'S LEGAL DUTY UNDER ARTICLE IX, §1 OF THE WASHINGTON CONSTITUTION?</b>	<b>54</b>
<b>(a)</b>	Findings of Fact relating to the propriety of a Court Order	55
<b>(b)</b>	Conclusions of Law relating to the propriety of a Court Order	56
<b>III.</b>	<b>CONCLUSION</b>	<b>57</b>

1 **I. INTRODUCTION**

2 1. The State of Washington Superior Court held a non-jury trial in this case, with the  
3 Honorable John P. Erlick presiding. Trial commenced with opening statements on Monday,  
4 August 31, 2009, and concluded with closing arguments on Thursday, October 15, 2009.

5 2. The Petitioners were represented by Thomas F. Ahearne, Christopher Emch,  
6 Edmund Robb, Kelly Lonergan, and Adrian Winder of Foster Pepper PLLC. The Respondent  
7 was represented by Senior Assistant Attorney General William G. Clark, Senior Assistant  
8 Attorney General David Stoller, Senior Assistant Attorney General Carrie Bashaw, Assistant  
9 Attorney General Dierk Meierbachtol of the Office of the Washington Attorney General. The  
10 Respondent State was also represented by John R. Munich and Jamie L. Boyer of the St. Louis,  
11 Missouri law firm of Stinson Morrison Hecker LLP. The issues of public importance in this case  
12 were fully, vigorously, and ably litigated and briefed by the parties and their counsel.

13 3. The Petitioners based their case on Article IX, §1 of the Washington State  
14 Constitution. That constitutional provision states in full:

15 It is the paramount duty of the state to make ample provision for the  
16 education of all children residing within its borders, without distinction or  
preference on account of race, color, caste, or sex.

17 Trial Exhibit 1.

18 4. The four-part remedy that the Petitioners seek in this case presents four  
19 fundamental questions for this Court to resolve. Those four questions are:

20 **Question #1 (declaratory judgment):**

21 What is the correct interpretation of the words “paramount”, “ample”, and  
“all” in Article IX, §1 of the Washington State Constitution?

22 **Question #2 (declaratory judgment):**

23 What is the correct interpretation of the word “education” in Article IX, §1 of  
the Washington State Constitution?

24 **Question #3 (declaratory judgment):**

25 Is the Respondent State currently complying with its legal duty under this  
Court’s interpretation of the language in Article IX, §1?



1                   **Question #4 (enforcement Order):**

2                   If the Respondent State is not currently complying with its legal duty under  
3                   this Court's interpretation of Article IX, §1, what (if any) Order should this  
4                   Court enter to uphold and enforce the State's legal duty?

5                   5.       The Court heard testimony and considered evidence from the witnesses listed on  
6                   the attached Exhibit A *[finalize and attach once trial over]*.

7                   6.       The Court admitted into evidence and considered the trial exhibits listed on the  
8                   attached Exhibit B *[finalize and attach once trial over]*.

9                   **II.       THE COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

10                  7.       Having heard and considered the testimony and other evidence presented at trial,  
11                  and having considered the legal memoranda and arguments of counsel, the Court enters these  
12                  Findings Of Fact And Conclusions Of Law ("Findings & Conclusions") in accordance with  
13                  Washington Superior Court Civil Rule 52.

14                  8.       Any "finding of fact" that is more properly characterized as a "conclusion of law"  
15                  should be considered a "conclusion of law" if necessary to prevent its being ignored or  
16                  disregarded. Similarly, any "conclusion of law" that is more properly characterized as a "finding  
17                  of fact" should be considered a "finding of fact" if necessary to prevent its being ignored or  
18                  disregarded.

19                  9.       This Court recognizes that due to the public's significant interest in this case, the  
20                  Findings & Conclusions entered in this case may be read more widely by lay members of the  
21                  public than the Findings & Conclusions entered in most other civil cases. These Findings &  
22                  Conclusions therefore are not organized in the run-on format that courts and lawyers are  
23                  commonly accustomed to drafting and digesting in most civil cases (i.e., one long list of assorted  
24                  factual findings for all issues and contentions in the case, followed by a second long list of  
25                  assorted legal conclusions). Instead, to better focus this Court's Findings & Conclusions and  
26                  make them more understandable to the lay members of the public reading them, these Findings  
                    & Conclusions are subdivided into separate sections by primary subject matter, with the factual

1 findings and legal conclusions relating to each subject matter grouped together in a single  
2 section. Each finding of fact and each conclusion of law in this document, however, relates to  
3 this case as a whole.

4 **A. PRELIMINARY MATTERS:**  
5 **the Parties, Jurisdiction, Venue, & Burdens of Proof**

6 **(a) Findings of Fact Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof**

7 **(i) *Short procedural history of this case.***

8 10. Petitioners filed their Petition For Declaratory Judgment Enforcing Our  
9 Constitution on January 11, 2007. The State filed its Answer on February 14, 2007.

10 11. This Court denied the parties' extensively briefed summary judgment requests on  
11 August 24 and September 20, 2007. In light of those summary judgment proceedings, this Court  
12 entered an Order on September 24, 2007 lifting the discovery stay in this case and setting a  
13 March 2, 2009 trial date.

14 12. Petitioners filed an *Amended* Petition For Declaratory Judgment Enforcing Our  
15 Constitution on December 6, 2007. The State filed its **first** Answer to the *Amended* Petition on  
16 December 31, 2007. The State filed its **Amended** Answer to the Petitioners' *Amended* Petition  
17 on August 7, 2008. After a status conference with counsel, the Court entered an Order on  
18 August 26, 2008 setting a June 1, 2009 trial date for this case. That trial date was subsequently  
19 rescheduled to the August 31, 2009 date upon which the trial of this case began.

20 **(ii) *The McCleary family.***

21 13. Petitioners Matt and Stephanie McCleary are Washington State citizens, voters,  
22 and taxpayers. They reside in Jefferson County, Washington with their two children, Carter and  
23 Kelsey. Matt and Stephanie McCleary brought this action on their own behalf, and as legal  
24 guardians on behalf of their son Carter and daughter Kelsey.

25 14. Carter and Kelsey McCleary attend the State's public schools.

1 Carter McCleary was a 7-year-old second grader at Chimacum Creek Primary School  
2 when this suit was filed. When this case went to trial, he was a 10-year-old fifth grader at  
3 Chimacum Elementary School.

4 Kelsey McCleary was a 13-year-old seventh grader at Chimacum Middle School when  
5 this suit was filed. Kelsey's mom was 13 when the Washington Supreme Court issued the  
6 *Seattle School District* decision discussed later in these Findings & Conclusions. When this case  
7 went to trial, Kelsey was a 15-year-old sophomore at Chimacum High School.

8 ***(iii) The Venema family.***

9 15. Petitioners Robert and Patty Venema are Washington State citizens, voters, and  
10 taxpayers. They reside in Snohomish County, Washington with their two children, Robbie and  
11 Halie. Robert and Patty Venema brought this action on their own behalf, and as legal guardians  
12 on behalf of their son Robbie and daughter Halie.

13 16. Robbie and Halie Venema attend Washington public schools.

14 Robbie Venema was a 12-year-old sixth grader at Cathcart Elementary School when this  
15 suit was filed. When this case went to trial, he was a 14-year-old freshman at Glacier Peak High  
16 School.

17 Halie Venema was a 15-year-old freshman at the freshman campus of Snohomish High  
18 School when this suit was filed. Halie's mom was in high school when the Washington Supreme  
19 Court issued the *Seattle School District* decision discussed later in these Findings & Conclusions.  
20 When this case went to trial, Halie was a 17-year-old senior at Glacier Peak High School.

21 ***(iv) The Network for Excellence in Washington Schools ("NEWS").***

22 17. Petitioner Network for Excellence in Washington Schools ("NEWS") is a  
23 State-wide coalition of community groups, school districts, and education organizations. Its  
24 stated mission is to support better education in Washington's public schools. It is a non-profit  
25 corporation organized under the laws of the State of Washington. At the time of trial, its  
26 members included the members identified below.

1           18.   Washington State PTA. The Washington State Parent Teacher Association is a  
2 State-wide association with over 150,000 members in over 900 local PTA units throughout  
3 Washington. The vast majority of its members are parents of children in the State's public  
4 schools. The Washington State PTA's stated mission is to be a powerful voice for all children, a  
5 relevant resource for families and communities, and a strong advocate for the education and  
6 well-being of every child. It has a history in this State of speaking on behalf of children and  
7 youth in the schools, in the community, and before government bodies and other organizations  
8 that make decisions affecting children; supporting parents in developing the skills to raise,  
9 protect, and advocate for their children; and encouraging parent and community involvement in  
10 education.

11           19.   Washington State League of Women Voters. The League of Women Voters of  
12 Washington is a State-wide, non-partisan organization with local chapters in 23 locations across  
13 Washington – i.e., the Bellingham-Whatcom Counties chapter, Benton-Franklin Counties  
14 chapter, Clallam County chapter, Clark County chapter, Cowlitz County chapter, Grays Harbor  
15 County chapter, Jefferson County chapter, King County South chapter, Kitsap County chapter,  
16 Kittitas County chapter, Mason County chapter, Methow Valley chapter, Pullman chapter, San  
17 Juan County chapter, Seattle chapter, Skagit County chapter, Snohomish County chapter, South  
18 Whidbey Island chapter, Spokane Area chapter, Tacoma-Pierce chapter, Thurston County  
19 chapter, Whidbey Island chapter, and Yakima County chapter. The Washington League of  
20 Women Voters' stated mission is to encourage the informed and active participation of citizens  
21 in government and to influence public policy through education and advocacy. It has a  
22 longstanding interest in education dating back to the 1930s, when the organization worked for  
23 the then-Superintendent of Public Instruction. Since that time, the Washington League of  
24 Women Voters has published several studies on Washington's public school system and joined  
25 State-wide coalitions to enhance its school funding lobbying efforts.  
26

1           20.   El Centro de la Raza. El Centro de la Raza is a non-profit organization based in  
2 the old Beacon Hill School in King County. It runs a variety of education-related programs and  
3 services for children and families in low income, Latino American, and other historically  
4 disadvantaged segments of our State's population. These programs include before- and after-  
5 school assistance, summer school classes, and an early childhood educational center. El Centro  
6 de la Raza's stated mission is to build unity across all racial and economic sectors; to organize,  
7 empower, and defend our most vulnerable and marginalized populations; and to bring justice,  
8 dignity, equality, and freedom to all the peoples of the world. It has a history in this State of  
9 providing mentoring and tutoring services to Washington's public school children and offering  
10 an educational environment that enhances the physical, emotional, social, and intellectual  
11 potential of children.

12           21.   Urban League. The Urban League of Metropolitan Seattle is a non-profit  
13 organization in the larger urban areas of King County. It runs a variety of education-related  
14 programs and services for children and families in low income, African American, and other  
15 historically disadvantaged segments of our State's population. The Urban League of  
16 Metropolitan Seattle was established in 1929 and incorporated in 1936 as one of the 115  
17 affiliates of the National Urban League. The Urban League of Metropolitan Seattle's stated  
18 mission is to empower, enable, and assist African Americans, other people of color, and  
19 disadvantaged individuals in becoming self sufficient through public advocacy, providing  
20 services, and developing strong business and community partnerships. It has a history in this  
21 State of providing the community with imperative cultural and educational resources, including  
22 tutoring, programs for academic enrichment, and scholarships.

23           22.   Equitable Opportunity Caucus (EOC). The Equitable Opportunity Caucus is a  
24 coalition of Washington State student and family advocates, tribal leaders, leaders of diverse  
25 cultural communities, advocates for students with disabilities, and educators who advocate for  
26 the educational interests of all children. The Equitable Opportunity Caucus has a history in this



1 State of working toward the improvement of education for all children in Washington's public  
2 schools.

3 23. Minority Executive Directors Coalition (MEDC). The Minority Executive  
4 Directors Coalition is a non-profit organization comprised of over 80 Executive Directors and  
5 Program Directors who are persons of color working in private sector, non-profit human service,  
6 and community development agencies in the King County area. It was founded in 1981 to unite  
7 the Asian Pacific American, African American, Native American, and Chicano Latino  
8 communities in advocacy for people of color. It is the region's longest standing and broadest  
9 based multi-ethnic coalition of its kind. It has a history in this region of working with legislators,  
10 government officials, and school districts to shape public policies affecting people of color.

11 24. Washington State Special Education Coalition (WSSEC). The Washington State  
12 Special Education Coalition is a State-wide, non-profit organization with over 30 member  
13 organizations, as well as several individual members throughout the State of Washington – the  
14 majority of whom have family members who are children with special education needs in the  
15 State's public schools. The Washington State Special Education Coalition was formed in 1977.  
16 Its stated mission is to bring together parent and professional organizations who are interested in  
17 the special needs and concerns of students in need of special education and support services. It  
18 has a history in this State of advocating for quality education for all children, particularly those  
19 receiving special education services in our State.

20 25. Disability Rights Washington (DRW). Disability Rights Washington, formerly  
21 known as the Washington Protection and Advocacy System, Inc., is a State-wide, non-profit  
22 organization in the State of Washington. The majority of its members are individuals with  
23 disabilities and/or have family members with disabilities. Disability Rights Washington's stated  
24 mission is to advance the dignity, equity, and self-determination of people with disabilities and to  
25 pursue justice on matters related to human and legal rights. It has a history in this State of  
26



1 placing a priority on ensuring that students with disabilities receive free appropriate public  
2 education.

3 26. American Association of University Women of Washington (AAUW). The  
4 American Association of University Women of Washington is a State-wide, non-profit  
5 organization with over 1,800 members. It was established in 1881 and consists of 37 local  
6 branches: Anacortes, Bellingham, Clallum, Colville, Cowlitz County, Dayton, Edmonds,  
7 Everett, Federal Way, Gig Harbor, Highline, Hudson's Bay, Issaquah, Kirkland-Redmond, Lake  
8 Washington (Bellevue), Lewis County, Mount Vernon, Okanogan-Omak, Olympia, Palouse-  
9 Garfield, Port Townsend, Puyallup Valley, Ritzville, Seattle, Southeast King County, Spokane,  
10 Stanwood-Camano Island, Tacoma, Tri-Cities, Twin Harbors, Vancouver, Walla Walla,  
11 Wenatchee, Whidbey Island, Willapacific, Yakima, and an Online branch. The American  
12 Association of University Women of Washington's stated mission is to advance equity for  
13 women and girls through advocacy, education, and research. It believes that "Education is the  
14 key to women's economic security." It has a history in this State of advocating for responsible,  
15 ample, and stable State funding for all levels of education.

16 27. Lutheran Public Policy Office of Washington State. The Lutheran Public Policy  
17 Office of Washington State is one of the 20 State Public Policy Offices of the Evangelical  
18 Lutheran Church in America. The Lutheran Public Policy Office of Washington State was  
19 formed in 1984. Its stated mission is to advocate justice for all of creation, particularly those  
20 who are impoverished and marginalized. It has a history in this State of advocating for a quality  
21 education system for Washington's children.

22 28. The Seattle Breakfast Group. The Seattle "Breakfast Group" is a Seattle  
23 non-profit organization dedicated to leadership and community service. It is an organization of  
24 African American business and professional men that have been active in the Seattle community  
25 for more than 30 years. One of the primary focuses of the organization is to provide support for  
26 youth in achieving their educational objectives. The Breakfast Group's stated mission is to bring

1 together African American men of true value for community service and to provide economic  
2 empowerment through leadership. It has a history in this State of working with high-risk young  
3 men to help them complete school and access higher education.

4 29. Vietnamese Friendship Association. The Vietnamese Friendship Association was  
5 originally established in 1978 to help Vietnamese refugees and immigrants adjust to life in the  
6 United States after the Vietnam War. Since that time, it has shifted its focus to promoting  
7 academic success, leadership development, parental involvement, cultural enrichment, and  
8 community building among underprivileged families with school-age children. The Vietnamese  
9 Friendship Association's stated mission is to empower the Vietnamese community to succeed  
10 while bridging, preserving, and promoting cultural heritage. It has a history in this State of  
11 providing mentoring, parent advocacy services, tutoring, and summer and after-school programs  
12 for Washington's public school children.

13 30. Arlington School District. Arlington School District No. 16 is one of the State's  
14 school districts in Snohomish County, with a student population of approximately 5,600  
15 students.

16 31. Auburn School District. Auburn School District No. 408 is one of the State's  
17 school districts in King County, with a student population of approximately 14,900 students.

18 32. Bainbridge Island School District. Bainbridge Island School District No. 303 is  
19 one of the State's school districts in Kitsap County, with a student population of approximately  
20 4,000 students.

21 33. Bellevue School District. Bellevue School District No. 405 is one of the State's  
22 school districts in King County, with a student population of approximately 17,200 students.

23 34. Bellingham School District. Bellingham School District No. 501 is one of the  
24 State's school districts in Whatcom County, with a student population of approximately 10,700  
25 students.  
26

1           35.   Chimacum School District. Chimacum School District No. 49 is one of the  
2 State's school districts in Jefferson County, with a student population of approximately 1,100  
3 students.

4           36.   Clover Park School District. Clover Park School District No. 400 is one of the  
5 State's school districts in Pierce County, with a student population of approximately 12,200  
6 students.

7           37.   Edmonds School District. Edmonds School District No. 15 is one of the State's  
8 school districts in Snohomish County, with a student population of approximately 20,700  
9 students.

10          38.   Federal Way School District. Federal Way School District No. 210 is one of the  
11 State's school districts in King County, with a student population of approximately 22,400  
12 students.

13          39.   Highline School District. Highline School District No. 401 is one of the State's  
14 school districts in King County, with a student population of approximately 17,500 students.

15          40.   Kelso School District. Kelso School District No. 458 is one of the State's school  
16 districts in Cowlitz County, with a student population of approximately 5,200 students.

17          41.   Kent School District. Kent School District No. 415 is one of the State's school  
18 districts in King County, with a student population of approximately 27,400 students.

19          42.   Lakewood School District. Lakewood School District No. 306 is one of the  
20 State's school districts in Snohomish County, with a student population of approximately 2,600  
21 students.

22          43.   Marysville School District. Marysville School District No. 25 is one of the  
23 State's school districts in Snohomish County, with a student population of approximately 11,900  
24 students.  
25  
26

1           44.   North Kitsap School District. North Kitsap School District No. 400 is one of the  
2 State's school districts in Kitsap County, with a student population of approximately 6,800  
3 students.

4           45.   Northshore School District. Northshore School District No. 417 is one of the  
5 State's school districts in King County, with a student population of approximately 19,800  
6 students.

7           46.   Olympia School District. Olympia School District No. 111 is one of the State's  
8 school districts in Thurston County, with a student population of approximately 9,400 students.

9           47.   Omak School District. Omak School District No. 19 is one of the State's school  
10 districts in Okanogan County, with a student population of approximately 1,800 students.

11           48.   Orcas Island School District. Orcas Island School District No. 137 is one of the  
12 State's school districts in San Juan County, with a student population of approximately 500  
13 students.

14           49.   Pasco School District. Pasco School District No. 1 is one of the State's school  
15 districts in Franklin County, with a student population of approximately 13,900 students.

16           50.   Peninsula School District. Peninsula School District No. 401 is one of the State's  
17 school districts in Pierce County, with a student population of approximately 9,400 students.

18           51.   Puyallup School District. Puyallup School District No. 3 is one of the State's  
19 school districts in Pierce County, with a student population of approximately 21,700 students.

20           52.   San Juan Island School District. San Juan Island School District No. 149 is one  
21 of the State's school districts in San Juan County, with a student population of approximately  
22 900 students.

23           53.   Seattle School District. Seattle School District No. 1 is one of the State's school  
24 districts in King County, with a student population of approximately 46,000 students.

25           54.   Shoreline School District. Shoreline School District No. 412 is one of the State's  
26 school districts in King County, with a student population of approximately 9,200 students.

[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW - 14

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1        55.    Snohomish School District. Snohomish School District No. 201 is one of the  
2 State's school districts in Snohomish County, with a student population of approximately 9,800  
3 students.

4        56.    South Kitsap School District. South Kitsap School District No. 402 is one of the  
5 State's school districts in Kitsap County, with a student population of approximately 10,300  
6 students.

7        57.    Spokane School District. Spokane School District No. 81 is one of the State's  
8 school districts in Spokane County, with a student population of approximately 29,700 students.

9        58.    Tahoma School District. Tahoma School District No. 409 is one of the State's  
10 school districts in King County, with a student population of approximately 7,400 students.

11       59.    Vancouver School District. Vancouver School District No. 37 is one of the  
12 State's school districts in Clark County, with a student population of approximately 22,600  
13 students.

14       60.    Yakima School District. Yakima School District No. 7 is one of the State's  
15 school districts in Yakima County, with a student population of approximately 14,600 students.

16       61.    Washington Education Association. The Washington Education Association is a  
17 State-wide organization of approximately 78,000 teachers and educators working in the State's  
18 public schools. Approximately 63,000 of its active members are certificated teachers in the  
19 State's K-12 public schools. Approximately 12,000 more are educational support professionals  
20 in the State's K-12 public schools. The Washington Education Association's stated mission  
21 statement includes making public education "the best it can be for students, staff, and  
22 communities." It has a history in this State of improving the quality of and access to public  
23 education for all students.

24       62.    Arlington Education Association. The Arlington Education Association is the  
25 labor organization that represents approximately 301 non-supervisory education employees in  
26 the Arlington School District.

[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW - 15

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1           63.   Auburn Education Association. The Auburn Education Association is the labor  
2 organization that represents approximately 861 non-supervisory education employees in the  
3 Auburn School District.

4           64.   Bainbridge Island Education Association. The Bainbridge Island Education  
5 Association is the labor organization that represents approximately 260 non-supervisory  
6 education employees in the Bainbridge Island School District.

7           65.   Bellevue Education Association. The Bellevue Education Association is the labor  
8 organization that represents approximately 1,150 non-supervisory education employees in the  
9 Bellevue School District.

10          66.   Bellingham Education Association. The Bellingham Education Association is the  
11 labor organization that represents approximately 767 non-supervisory education employees in  
12 the Bellingham School District.

13          67.   Chimacum Independent Association. The Chimacum Independent Association is  
14 the labor organization that represents approximately 39 non-supervisory education employees in  
15 the Chimacum School District.

16          68.   Chimacum Education Association. The Chimacum Education Association is the  
17 labor organization that represents approximately 66 non-supervisory education employees in the  
18 Chimacum School District.

19          69.   Clover Park Education Association. The Clover Park Education Association is  
20 the labor organization that represents approximately 794 non-supervisory education employees  
21 in the Clover Park School District.

22          70.   Edmonds Education Association. The Edmonds Education Association is the  
23 labor organization that represents approximately 1,351 non-supervisory education employees in  
24 the Edmonds School District.



1           71.   Federal Way Education Association. The Federal Way Education Association is  
2 the labor organization that represents approximately 1,397 non-supervisory education employees  
3 in the Federal Way School District.

4           72.   Highline Education Association. The Highline Education Association is the labor  
5 organization that represents approximately 1,320 non-supervisory education employees in the  
6 Highline School District.

7           73.   Kelso Education Association. The Kelso Education Association is the labor  
8 organization that represents approximately 330 non-supervisory education employees in the  
9 Kelso School District.

10          74.   Kent Education Association. The Kent Education Association is the labor  
11 organization that represents approximately 1,812 non-supervisory education employees in the  
12 Kent School District.

13          75.   Lakewood Education Association. The Lakewood Education Association is the  
14 labor organization that represents approximately 148 non-supervisory education employees in  
15 the Lakewood School District.

16          76.   Marysville Education Association. The Marysville Education Association is the  
17 labor organization that represents approximately 685 non-supervisory education employees in  
18 the Marysville School District.

19          77.   North Kitsap Education Association. The North Kitsap Education Association is  
20 the labor organization that represents approximately 405 non-supervisory education employees  
21 in the North Kitsap School District.

22          78.   Northshore Education Association. The Northshore Education Association is the  
23 labor organization that represents approximately 1,201 non-supervisory education employees in  
24 the Northshore School District.

1           79.   Olympia Education Association. The Olympia Education Association is the labor  
2 organization that represents approximately 564 non-supervisory education employees in the  
3 Olympia School District.

4           80.   Omak Education Association. The Omak Education Association is the labor  
5 organization that represents approximately 103 non-supervisory education employees in the  
6 Omak School District.

7           81.   Orcas Island Education Association. The Orcas Island Education Association is  
8 the labor organization that represents approximately 39 non-supervisory education employees in  
9 the Orcas Island School District.

10          82.   Pasco Association of Educators. The Pasco Association of Educators is the labor  
11 organization that represents approximately 781 non-supervisory education employees in the  
12 Pasco School District.

13          83.   Peninsula Education Association. The Peninsula Education Association is the  
14 labor organization that represents approximately 583 non-supervisory education employees in  
15 the Peninsula School District.

16          84.   Puyallup Education Association. The Puyallup Education Association is the labor  
17 organization that represents approximately 1,246 non-supervisory education employees in the  
18 Puyallup School District.

19          85.   San Juan Island Education Association. The San Juan Island Education  
20 Association is the labor organization that represents approximately 61 non-supervisory education  
21 employees in the San Juan Island School District.

22          86.   Seattle Education Association. The Seattle Education Association is the labor  
23 organization that represents approximately 4,532 non-supervisory education employees in the  
24 Seattle School District.

1           87.   Shoreline Education Association. The Shoreline Education Association is the  
2 labor organization that represents approximately 593 non-supervisory education employees in  
3 the Shoreline School District.

4           88.   Snohomish Education Association. The Snohomish Education Association is the  
5 labor organization that represents approximately 547 non-supervisory education employees in  
6 the Snohomish School District.

7           89.   South Kitsap Education Association. The South Kitsap Education Association is  
8 the labor organization that represents approximately 623 non-supervisory education employees  
9 in the South Kitsap School District.

10          90.   Spokane Education Association. The Spokane Education Association is the labor  
11 organization that represents approximately 2,923 non-supervisory education employees in the  
12 Spokane School District.

13          91.   Tahoma Education Association. The Tahoma Education Association is the labor  
14 organization that represents approximately 409 non-supervisory education employees in the  
15 Tahoma School District.

16          92.   Vancouver Education Association. The Vancouver Education Association is the  
17 labor organization that represents approximately 1,366 non-supervisory education employees in  
18 the Vancouver School District.

19          93.   Yakima Education Association. The Yakima Education Association is the labor  
20 organization that represents approximately 901 non-supervisory education employees in the  
21 Yakima School District.

22          94.   The Respondent. The Respondent is the State of Washington. Pursuant to  
23 Article IX, §1 of our State Constitution, the Respondent State provides each of the State's public  
24 school districts with funds for education.

1 **(b) Conclusions of Law Concerning the Parties, Jurisdiction, Venue, & Burdens of Proof**

2 95. Venue for this action properly lies in this Washington State Superior Court for  
3 King County.

4 96. This Washington State Superior Court has jurisdiction over this action, and the  
5 Petitioners have satisfied all conditions precedent to bringing this action.

6 97. To prove the existence of a fact, the party alleging that fact must show that that  
7 fact is more likely than not true. In other words, that fact must be proven by a preponderance of  
8 the evidence at trial. Accord, *Seattle School District v. State*, 90 Wn.2d 476, 528 (1978) (when  
9 court is “concerned with legislative compliance with a specific constitutional mandate ... the  
10 normal civil burden of proof, *i.e.*, preponderance of the evidence, applies”). Petitioners’  
11 fundamental contention is that the Respondent State has failed to take the action required to fully  
12 comply with a specific constitutional mandate – namely, the State’s paramount constitutional  
13 duty under Article IX, §1. The “preponderance of the evidence” standard accordingly applies in  
14 this case. E.g., *Seattle School District v. State*, 90 Wn.2d at 528.

15 This contrasts with the situation where the constitutionality of a statute is challenged, and  
16 the burden is on the party challenging that statute to prove its unconstitutionality beyond a  
17 “reasonable doubt”. E.g., *Island County v. State*, 135 Wn.2d 141, 146 (1998). The Washington  
18 Supreme Court has explained, however, that even when a specific statutory provision is being  
19 challenged, the “reasonable doubt” standard is not the same as the one applied in a criminal case:  
20 “The ‘reasonable doubt’ standard, when used in the context of a criminal proceeding as the  
21 standard necessary to convict an accused of a crime, is an evidentiary standard and refers to ‘the  
22 necessity of reaching a subjective state of certitude of the facts in issue.’ In contrast, the ‘beyond  
23 a reasonable doubt’ standard used when a statute is challenged as unconstitutional refers to the  
24 fact that one challenging a statute must, by argument and research, convince the court that there  
25 is no reasonable doubt that the statute violates the constitution.” *Island County v. State*, 135  
26 Wn.2d at 147.

1 Here, since Petitioners' fundamental contention is not that a specific statutory provision  
2 is unconstitutional, but rather that the State has failed to comply with the specific constitutional  
3 mandate of Article IX, §1, the "preponderance of the evidence" standard applies. See *Seattle*  
4 *School District v. State*, 90 Wn.2d at 528.

5 98. This Court has determined that each finding of fact and each conclusion of law set  
6 forth in these Findings & Conclusions satisfy the standards of proof under Washington law.

7  
8 **B. GENERAL BACKGROUND:**  
9 **the Importance of Education in our State's Democracy**

10 **(a) Findings of Fact Concerning the Importance of Education in our State's Democracy**

11 99. The Respondent State has straightforwardly admitted in this suit that "A healthy  
12 democracy depends on educated citizens." Original Petition at ¶20 ("20. A healthy democracy  
13 depends on educated citizens.") and original Answer at ¶11 ("11. Respondent admits the  
14 allegation in paragraph 20."). The evidence at trial and statutory framework of this State, some  
15 of which is outlined below, confirmed the factually accuracy of that statement, especially in the  
16 type of broad, populist democracy established in this State by Washington law.

17 87. The citizens of this State publicly elect a broad array of, and large number of, the  
18 public officials who run the State and local governments in Washington. For example, the  
19 citizens of this State:

- 20 • elect their Governor, Lieutenant Governor, Attorney General, Secretary of State,  
21 Treasurer, Auditor, Commissioner of Public Lands, Insurance Commissioner, and  
22 Superintendent of Public Instruction in State-wide elections.<sup>1</sup>
- 23 • elect their 49 State Senators and 98 State Representatives in Legislative District  
24 elections.<sup>2</sup>
- 25 • elect the Auditors,<sup>3</sup> Clerks, Commissioners, Sheriffs, and Treasurers in each of  
26 their 39 Counties.

<sup>1</sup> Wash. Const. art. III §1 (Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendant of Public Instruction, and Commissioner of Public Lands); RCW 48.02.010 (Insurance Commissioner).

<sup>2</sup> Wash. Const. art. II §§ 4, 6; RCW 44.05.090(4).



- elect the Mayors, Commissioners, and members of the City Councils of this State's over 280 cities and towns.<sup>4</sup>
- elect the 9 justices of this State's Supreme Court.<sup>5</sup>
- elect the 24 judges of this State's Courts of Appeal.<sup>6</sup>
- elect the 181 judges of this State's Superior Courts.<sup>7</sup>
- elect the 110 judges of this State's District Courts.<sup>8</sup>
- elect the 109 judges of this State's Municipal Courts.<sup>9</sup>
- elect the members of the Boards of Commissioners of each of this State's 373 Fire Protection Districts.<sup>10</sup>
- elect the members of the School Boards of each of this State's 295 School Districts.<sup>11</sup>
- elect the members of the Boards of Commissioners of each of this State's 56 Public Hospital Districts.<sup>12</sup>
- elect the members of the Boards of Commissioners of each of this State's 185 Water-Sewer Districts.<sup>13</sup>

<sup>3</sup> RCW 36.16.030; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

<sup>4</sup> RCW 35.17.020, 35.18.010, 35.22.200, 35.23.021, 35.27.070; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

<sup>5</sup> Wash. Const. art. IV §3; RCW 2.04.070-.071.

<sup>6</sup> Wash. Const. art. IV §30; RCW 2.06.020.

<sup>7</sup> Wash. Const. art. IV §5; RCW 2.08.060; see 2008 Washington State Yearbook 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>8</sup> RCW 3.34.050; see 2008 Washington State Yearbook 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>9</sup> RCW 3.50.050; see 2008 Washington State Yearbook 16-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>10</sup> RCW 52.14.060; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 4 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 232-39 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>11</sup> RCW 28A.343.300; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 11 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; Bureau of the Census, U.S. Dep't of Commerce, 2007 Census of Governments: Individual State Description, Washington, available at <http://ftp2.census.gov/govs/cog/2007/wa.pdf>.

<sup>12</sup> RCW 70.44.040; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 10 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 240 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).



- elect the members of the Boards of Commissioners of each of this State's 27 Public Utilities Districts.<sup>14</sup>
- elect the members of the Boards of Commissioners of each of this State's 42 Park and Recreation Districts.<sup>15</sup>
- elect the members of the Boards of Commissioners of each of this State's 75 Port Districts.<sup>16</sup>
- elect the members of the Boards of Directors of each of this State's 98 Irrigation Districts.<sup>17</sup>
- elect the members of the Boards of Commissioners of each of this State's 103 Cemetery Districts.<sup>18</sup>
- elect the members of the Boards of Commissioners of each of this State's 107 Diking and Drainage Districts.<sup>19</sup>
- elect the majority of the members of the Boards of Commissioners of each of this State's 47 Conservation Districts.<sup>20</sup>
- elect the members of the Boards of Directors of each of this State's 10 Flood Control Districts.<sup>21</sup>

<sup>13</sup> RCW 57.12.030; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 13 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 253-56 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>14</sup> RCW 54.12.010; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 10 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 252 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>15</sup> RCW 36.69.090; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 8 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 249-50 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>16</sup> RCW 53.12.172; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 9 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 250-52 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>17</sup> RCW 87.03.080; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 7 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 241-42 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>18</sup> RCW 68.52.220; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 1 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 227-28 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>19</sup> RCW 85.38.070; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 2 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 230-32 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>20</sup> RCW 89.08.030; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 1 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 Washington State Yearbook 229-30 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>21</sup> RCW 85.38.070, 86.09.259; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 5 (2009),

- elect the members of the Boards of Directors of each of this State's 11 Weed Districts.<sup>22</sup>

88. In short, Washington citizens democratically elect more of their State and local government officials than do the citizens in most other States in our Nation.<sup>23</sup>

89. The citizens of this State routinely exercise their right to amend the Washington State Constitution pursuant Article XXIII. For example, in the past 30 years the citizens of this State have considered and voted upon 49 proposed Amendments to their State Constitution, **adopting** 31 Amendments to their State Constitution and **rejecting** 18 other proposed Amendments.<sup>24</sup>

90. Washington is also one of the two States in our country where voters have the right and power to initiate legislation both directly (to the People) and indirectly (to the legislature).<sup>25</sup>

91. The citizens of this State established for themselves the right and power to propose and enact State-wide legislation by way of Initiative in a 1912 Amendment to their State Constitution, which is now Article II, §1(a). Washington citizens routinely exercise this right of direct democracy. The citizens of this State have:

- **filed** and circulated for signature over 1,030 Initiative petitions proposing new State-wide legislation to be submitted to the citizens of Washington for a State-wide vote.<sup>26</sup>

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<http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 *Washington State Yearbook* 239 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>22</sup> RCW 17.04.070; Municipal Research & Servs. Ctr. of Wash., Washington Special Purpose Districts 14 (2009), <http://www.mrsc.org/Subjects/Governance/spd/SPDChart0109.pdf>; see 2008 *Washington State Yearbook* 249 (Scott D. Dwyer & Mary B. Dwyer eds., 26th ed. 2008).

<sup>23</sup> Bureau of the Census, U.S. Dep't of Commerce, 1992 Census of Governments Vol. 1, No. 2, Popularly Elected Officials tbl. 2 and tbl. 17 (1995), available at [http://www.census.gov/prod/2/gov/gc.gc92\\_1\\_2.pdf](http://www.census.gov/prod/2/gov/gc.gc92_1_2.pdf).

<sup>24</sup> See Wash. Sec'y of State, Elections & Voting, Previous Elections, [http://www.secstate.wa.gov/elections/previous\\_elections.aspx](http://www.secstate.wa.gov/elections/previous_elections.aspx).

<sup>25</sup> Initiative & Referendum Inst., *The Initiative & Referendum Process in America – A Primer* 9 & app. A, tbl. 1.1 (M. Dane Waters ed. 1992).

<sup>26</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

- **filed** and circulated for signature over 430 Initiative petitions proposing new State-wide legislation to be voted upon by the legislature.<sup>27</sup>
- **certified** to the State-wide ballot over 130 Initiative Measures by securing the required number of signatures (currently 241,153) to submit State-wide legislation to the citizens of Washington for a State-wide Initiative vote.<sup>28</sup>
- **certified** to the legislature an additional 30 Initiative Measures by securing the required number of signatures (currently 241,153) to submit State-wide legislation to an Initiative vote in the legislature.<sup>29</sup>
- **enacted** in State-wide elections 80 Initiative Measures as the law of this State.<sup>30</sup>

92. In fact, Washington citizens directly enact more State laws at the ballot box than do the citizens in all but five other States in our Nation.<sup>31</sup>

93. Washington citizens' exercise of their Constitutional Initiative power has increased in the time period after the Washington Supreme Court's *Seattle School District* ruling. Washington citizens voted on 46 State-wide Initiative Measures in the 30 years before that 1978 ruling, and voted on 71 in the 30 years after.<sup>32</sup>

94. The citizens of this State have also established for themselves the right and power to put a hold on laws adopted by the State legislature until those laws are subjected to (and approved by) a Referendum vote of the People (Article II, §1(b)). Washington citizens routinely exercise this right of direct democracy. The citizens of this State have:

- **filed** and circulated for signature over 70 Referendum petitions to submit laws adopted by the State legislature to Washington's citizens for a State-wide vote.<sup>33</sup>

<sup>27</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>28</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>29</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>30</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>31</sup> Initiative & Referendum Inst., Overview of Initiative Use, 1904-2007 1 (2008), available at <http://www.iandrinstute.org/IRI%20Initiative%20Use.pdf>.

<sup>32</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>33</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

- **put on hold** 35 laws adopted by the State legislature until they could be examined and voted upon by Washington's citizens in a State-wide vote by securing the required number of signatures (currently 120,577) to submit State-wide legislation to the citizens of Washington for a State-wide Referendum vote.<sup>34</sup>
- **rejected** 30 laws<sup>35</sup> adopted by the State legislature through a State-wide Referendum vote.
- **enacted** 5 laws as the law of this State through a State-wide Referendum vote.<sup>36</sup>

95. In addition to the above, Washington citizens have also considered and voted upon 49 additional bills submitted by the legislature for a State-wide Referendum vote of the People.<sup>37</sup> Of those 49 Referendum bills, Washington's citizens considered and **rejected** 11 of those bills adopted by the State legislature, and **enacted** 38 of those bills as the law of this State.<sup>38</sup>

96. The citizens in this State's democracy also routinely exercise their right to directly enact (or reject) local legislation at the ballot box pursuant to Washington State statutes (e.g., RCW 35.22.200), local government charters (e.g., King County Charter §230), and local ordinances (e.g., City of Woodinville, Ordinance 119). For example, local voters in this State routinely exercise their right of direct democracy to enact or reject local government ballot measures relating to property taxes, sales taxes, public health, and other governmental issues, which includes (but has not been limited to):

- considering and voting upon local tax levies for school districts, public hospital districts, fire protection districts, water-sewer districts, public facilities districts, park and recreation districts, road districts, ferry districts, airport districts, county rail districts, cities and towns, etc.<sup>39</sup>

<sup>34</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>35</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>36</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>37</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>38</sup> See Wash. Sec'y of State, Elections & Voting, Index to Initiative & Referendum Statistics: 1914-2008, <http://www.secstate.wa.gov/elections/initiatives/statistics.aspx>.

<sup>39</sup> <http://www.mrsc.org/subjects/governance/spd/SPD-Revenues.aspx>.



- considering and voting upon the creation of public hospital districts, fire protection districts, port districts, conservation districts, flood control districts, water-sewer districts, park and recreation districts, etc.<sup>40</sup>
- considering and voting upon local ballot measures relating to City-wide school bussing bans, County government restructuring, City-wide gambling bans, City-wide plastic bag fees, City enforcement of marijuana laws, City mass transit projects, etc.<sup>41</sup>

97. To help citizens inform themselves about the various candidates and ballot measures they will be voting upon in the State elections noted above, the Washington's Constitution and State statutes require the Washington Secretary of State to publish and mail to every household in this State a Voters' Pamphlet. Wash. Const., Art. II, §1(e); RCW 29A.32.010; RCW 29A.32.031. That Voters' Pamphlet provides information concerning the measures and candidates on the ballot, such as the full text of each Initiative, Referendum, or Constitutional Amendment being submitted for a vote, a fiscal impact statement explaining various fiscal impacts of such ballot measures, "for" and "against" statements by proponents and opponents of each ballot measure, and candidacy statements by each person running for State office. Washington law provides for similar local Voters' Pamphlets relating to local elections as well. RCW 29A.32.210.

98. For a citizen of this State to meaningfully participate in this State's democratic process and intelligently cast his or her vote on the broad array of State and local government offices and ballot measures noted above, that citizen must be meaningfully equipped to learn about, understand, and evaluate the candidates, ballot measures, positions, and issues being debated and decided in that election. Having an educated citizenry is accordingly critical to this State's democracy.

<sup>40</sup> <http://www.mrsc.org/Subjects/Governance/spd/SPD-Formation.aspx>.

<sup>41</sup> E.g., City of Seattle Initiative No. 34 (school bussing ban); King County Alternative Proposed Charter Amendments 1a and 1b (restructuring the King County Council); City of Lakewood Proposition No. 1 (banning minicasinios); City of Seattle Referendum No. 1 (plastic bag tax); City of Seattle Initiative No. 75 (enforcement and prosecution of certain marijuana offenses); City of Seattle Initiative No. 41 (Seattle Monorail project).

1           99. Having an educated citizenry is also vital to the operation of this State's justice  
2 system. For example, the jury system upon which this State's justice system is based depends  
3 upon each juror being meaningfully equipped to read, understand, comprehend, and debate the  
4 evidence, issues, and arguments presented to the jury for decision.

5           100. Having an educated citizenry also plays a vital role in preserving the cohesiveness  
6 of this State's pluralistic society as a whole. For example, broad public education provides each  
7 member of this State's citizenry a shared knowledge and understanding of the common history,  
8 common values, and common ideals that all citizens in this State share. This unifying awareness  
9 and understanding is especially important to maintain the cohesiveness of a widely diverse  
10 society like the one in this State, which is an amalgamation of citizens from a wide range of

- 11           • different cultures (e.g., Chinese-American, Mexican-American, Native American,  
12 Pacific Islander, Hmong, former Soviet Bloc immigrants, etc.),
- 13           • different backgrounds (e.g., poor, rich, white-collar, blue-collar, suburban, rural,  
14 urban, etc.),
- 15           • different lifestyles, preferences, and neighborhoods, and
- 16           • different family roots (new immigrants, first-generation Americans, the Mayflower  
17 crowd [or Seattle's equivalent: the Denny crowd], etc.).

18           101. Education also plays a critical civil rights role in promoting equality in our  
19 democracy. For example, amply provided, free public education operates as the great equalizer  
20 in our democracy, equipping citizens born into the underprivileged segments of our society with  
21 the tools they need to compete on a level playing field with citizens born into wealth or privilege.

22           102. Education also plays a critical role in building and maintaining the strong  
23 economy necessary to support a stable democracy, one that is free and independent from outside  
24 power and influence. For example, broad public education builds the well educated workforce  
25 necessary to attract more stable and higher wage jobs to this State's economy, as well as provide  
26 the living wage jobs and employment necessary to provide gainful employment to this State's



1 citizens, and lessening the burdens on this State's citizens of social services, crime, and  
2 incarceration.

3 103. The recognition of the critical role that education plays in a democracy is not new.  
4 As the author of our Declaration of Independence (Thomas Jefferson) succinctly noted: "If a  
5 nation expects to be ignorant and free, in a state of civilization, it expects what never was and  
6 never will be." Letter to Colonel Charles Yancey, Jan. 6, 1816, in Ford, The Writings, X, p. 1-4.  
7 Thomas Jefferson accordingly explained that broad, up-to-date public education is essential to  
8 maintain our democratic form of government, noting that there is "no safe depository of the  
9 ultimate powers of the society but the people themselves.... [and] if we think them not  
10 enlightened enough to exercise their control with a wholesome discretion, the remedy is not to  
11 take it from them, but to inform their discretion by education." Letter to William C. Jarvis, Sept.  
12 28, 1820, in Ford, ed., The Writings, X, p. 160-61.

13  
14 ***(b) Conclusions of Law Concerning the Importance of Education in our Democracy***

15 104. Prior legal rulings have been, and this Court's legal ruling in this matter is,  
16 consistent with the above facts concerning the importance of education in our democracy. As the  
17 *Brown v. Board of Education of Topeka, Kansas* Court declared:

18 ***Today, education is perhaps the most important function of state***  
19 ***and local governments. .... It is required in the performance of our***  
20 ***most basic public responsibilities, even service in the armed forces.***  
21 ***It is the very foundation of good citizenship. Today it is a principal***  
***instrument in awakening the child to cultural values, in preparing***  
***him for later professional training, and in helping him to adjust***  
***normally to his environment.***

22 *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873  
23 (1954) (bold italics added). And as the *Board of Education, Island Trees Union Free School*  
24 *District v. Pico* Court has reiterated:

25 [T]he right to receive ideas is a necessary predicate to the *recipient's*  
26 meaningful exercise of his own rights of speech, press, and political  
freedom. Madison admonished us: '***A popular Government, without***

1 *popular information, or the means of acquiring it, is but a Prologue to a*  
2 *Farce or a Tragedy; or, perhaps both. Knowledge will forever govern*  
3 *ignorance: And a people who mean to be their own Governors, must arm*  
4 *themselves with the power which knowledge gives.'*

5 *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 867,  
6 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982) (bold italics added); accord, *Plyler v. Doe*, 457 U.S. 202,  
7 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) ("*We have recognized 'the public schools as a most vital*  
8 *civic institution for the preservation of a democratic system of government'*") (quoting *Ambach*  
9 *v. Norwick*, 441 U.S. 68, 76, 99 S.Ct. 1589, 60 L.Ed.2d 49 (1979)) (bold italics added). In short,  
10 the law recognizes that public education plays an essential role in our democracy.

11 105. The law recognizes that education is the key to a citizen's meaningful exercise of  
12 his or her First Amendment freedoms. For example, as the *Richmond Newspapers v. Virginia*  
13 Court declared:

14 No aspect of [the First Amendment] guarantee is more rightly treasured  
15 than its protection of the ability of our people through free and open debate  
16 to consider and resolve their own destiny.... '[The] First Amendment is  
17 one of the vital bulwarks of our national commitment to intelligent self-  
18 government.' ... It embodies our Nation's commitment to popular self-  
19 determination and our abiding faith that the surest course for developing  
20 sound national policy lies in a free exchange of views on public issues.  
21 And *public debate must not only be unfettered; it must also be informed.*

22 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 587 n.3, 100 S.Ct. 2814, 65 L.Ed.2d 973  
23 (1980)) (quoting *Saxbe v. Washington Post Co.*, 417 U.S. 843, 862-63, 94 S.Ct. 2811, 41  
24 L.Ed.2d 514 (Powell, J., dissenting)) (bold italics added).

25 The Washington Supreme Court has accordingly held that the "education"  
26 constitutionally required by Article IX, §1 of the Washington Constitution "must prepare  
[children] to exercise their First Amendment freedoms both as sources and receivers of  
information". *Seattle School District v. State*, 90 Wn.2d 476, 517, 585 P.2d 71 (1978) (underline  
added). Accord, *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 473, 703 A.2d 1353 (1997)  
("[E]ven a minimalist view of educational adequacy recognizes the role of education in  
preparing citizens to participate in the exercise of voting and first amendment rights. The latter

1 being recognized as fundamental, it is illogical to place the means to exercise those rights on less  
2 substantial constitutional footing than the rights themselves.”).

3 106. The law recognizes that broad public education is also critically important to our  
4 democracy because it teaches children democratic values and ideals and unites the wide array of  
5 cultures present in our democratic society through a sharing of common values and ideals. E.g.,  
6 *Ambach v. Norwick*, 441 U.S. 68, 76-77, 99 S.Ct. 1589, 60 L.Ed.2d 49 (1979) (“The importance  
7 of public schools in the preparation of individuals for participation as citizens, and in the  
8 preservation of the values on which our society rests, long has been recognized by our  
9 decisions”, and acknowledging the role that a public education accordingly plays as “an  
10 ‘assimilative force’ by which diverse and conflicting elements in our society are brought together  
11 on a broad but common ground” and “inculcating fundamental values necessary to the  
12 maintenance of a democratic system”); *Brown v. Board. of Education of Topeka, Kansas*, 347  
13 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (public education is “a principal instrument in  
14 awakening the child to cultural values”); *Abington School District v. Schempp*, 374 U.S. 203,  
15 230 (1963) (Brennan, J., concurring) (public education is “the primary vehicle for transmitting  
16 ‘the values on which our society rests’”); *McCollum v. Board of Education*, 333 U.S. 203, 216,  
17 68 S.Ct. 461, 92 L.Ed. 649 (1948) (Frankfurter, J., concurring) (“The public school is ‘the most  
18 powerful agency for promoting cohesion among a heterogeneous democratic people ... and the  
19 most pervasive means for promoting our common destiny’”; RCW 28A.150.210 (expressly  
20 listing “civics and history, including different cultures and participation in representative  
21 government” in its specification of the knowledge and skills with which all students in this State  
22 should be equipped).

23 107. With the above general background findings and conclusions in mind, this Court  
24 now turns to some more specific background findings and conclusions concerning Article IX, §1  
25 of the Washington State Constitution.  
26

1 **C. SPECIFIC BACKGROUND:**  
2 **Article IX, §1 of the Washington State Constitution**

3 **(a) Background Findings of Fact Concerning Article IX, §1**

4 108. The constitutional provision at the heart of this case is Article IX, §1 of our State  
5 Constitution. That constitutional provision states in full:

6 It is the paramount duty of the state to make ample provision for the  
7 education of all children residing within its borders, without distinction or  
8 preference on account of race, color, caste, or sex.

9 Trial Exhibit 1.

10 **(b) Background Conclusions of Law Concerning Article IX, §1**

11 109. Washington law recognizes that the education duty specified in Article IX, §1 is  
12 the only duty that is the State's paramount duty. As the Washington State Supreme Court has  
13 held:

14 Careful examination of our constitution reveals that the framers declared  
15 only once in the entire document that a specified function was the State's  
16 paramount duty. That singular declaration is found in Constitution  
17 Article IX, §1. Undoubtedly, the imperative wording was intentional.

18 *Seattle School District v. State*, 90 Wn.2d at 510-11 (underline added).

19 110. Washington law recognizes that no other State Constitution imposes a higher  
20 education duty upon the State than Article IX, §1 of the Washington State Constitution does.  
21 The Washington Supreme Court has held that the education duty mandated by Article IX, §1 "is  
22 unique among State constitutions", and that "No other State has placed the common school on so  
23 high a pedestal." *Seattle School District v. State*, 90 Wn.2d at 498 & 510-511.

24 111. Washington law holds that Article IX, §1 grants each child residing in this State a  
25 constitutional right to the "education" specified in that provision. The Washington Supreme  
26 Court has thus held with respect to Article IX, §1 that "all children residing within the borders of  
the State possess a 'right', arising from the constitutionally imposed 'duty' of the State, to have  
the State make ample provision for their education". *Seattle School District v. State*, 90 Wn.2d  
at 511-512.

112. Washington law holds that the right to the “education” specified in Article IX, §1 is the paramount right granted to each child by our State Constitution. The Washington Supreme Court has accordingly held with respect to the mandate of Article IX, §1 that “since the ‘duty’ is characterized as Paramount the correlative ‘right’ has equal stature.” *Seattle School District v. State*, 90 Wn.2d at 511-512.

113. Washington law holds that Article IX, §1 imposes an affirmative, judicially enforceable duty upon the State. The Washington Supreme Court has thus held that Article IX, §1 “is mandatory and imposes a judicially enforceable affirmative duty” upon the State. *Seattle School District v. State*, 90 Wn.2d at 482 (underline added); accord, *Brown v. State*, 155 Wn.2d 254, 258 (2005) (Article IX, §1 “is substantive and enforceable” in the courts) (underline added).

114. With the above background findings and conclusions in mind, this Court now addresses each part of the four-part remedy Petitioners seek in this case and the fundamental question each part raises.

**D. QUESTION #1 (DECLARATORY JUDGMENT):**

**What is the correct interpretation of “paramount”, “ample”, and “all” in Article IX, §1?**

**(a) Findings of Fact relating to the interpretation of “paramount”, “ample”, and “all” in Article IX, §1.**

115. Article IX, §1 of the Washington State Constitution states:

It is the ***paramount*** duty of the state to make ***ample*** provision for the education of ***all*** children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Trial Exhibit 1 (bold italics added).

116. The parties in this case disagree on the meaning of the words “paramount”, “ample”, and “all” in the above constitutional provision. E.g., Petitioners’ Amended Petition at ¶108(a)-(c) and Respondent’s Amended Answer to that Amended Petition at ¶58.



1 **(b) Conclusions of Law concerning the legal interpretation of the words “paramount”,**  
2 **“ample”, and “all” in Article IX, §1.**

3 **(i) Judicial branch’s duty to interpret words used in the State**  
4 **Constitution.**

5 117. Washington law holds that it is the proper function of the judiciary to interpret,  
6 construe, and enforce our Constitution. E.g., *Seattle School District v. State*, 90 Wn.2d at 482 (it  
7 “is the proper function of the judiciary to interpret, construe and enforce the constitution of the  
8 State of Washington.”).

9 118. Washington law holds that the judiciary must exercise its duty to interpret and  
10 enforce our Constitution even when the judiciary’s interpretation of our Constitution is contrary  
11 to the interpretation of another branch. As the Washington Supreme Court has accordingly  
12 declared,

13 the judiciary has the ultimate power and the duty to interpret, construe and  
14 give meaning to words, sections and articles of the constitution. It is  
15 emphatically the province and duty of the judicial department to say what  
16 the law is. This duty must be exercised even when an interpretation serves  
17 as a check on the activities of another branch of government or is contrary  
18 to the view of the constitution taken by another branch.

19 *Seattle School District v. State*, 90 Wn.2d at 503-504 (citations omitted, underline added),  
20 similarly at 496-97.

21 119. Washington law holds that interpreting the words used in our State Constitution  
22 presents a pure question of law for the court to resolve. E.g., *State v. Pulfrey*, 154 Wn.2d 517,  
23 522 (2005) (interpreting State Constitution is a question of law); *Mt. Spokane Skiing v. Spokane*  
24 *County*, 86 Wn.App. 165, 172 (1997) (“The interpretation of Washington constitutional  
25 provisions is also a question of law”); *Humiston v. Meyers*, 61 Wn.2d 772, 777 (1963)  
26 (construction or interpretation of a provision of the constitution is a judicial question).  
Interpreting the words used in Article IX, §1 of the Washington State Constitution accordingly  
presents a pure question of law for this Court to resolve.



1 120. Washington law holds that the words used in this State's Constitution must be  
2 given their common English meaning – a meaning which is appropriately determined by  
3 referring to the dictionary. *Zachman v. Whirlpool Financial*, 123 Wn.2d 667, 670-71 (1994) (“In  
4 construing constitutional language, words are given their ordinary meaning unless otherwise  
5 defined.... When the common, ordinary meaning is not readily apparent, it is appropriate to  
6 refer to the dictionary.”); *Seattle School District v. State*, 90 Wn.2d at 511 (and thus at 511 and  
7 512 quoting WEBSTER'S THIRD NEW INT'L DICTIONARY for the meaning of words used in  
8 Article IX, §1).

9 (ii) “paramount”

10 121. WEBSTER'S THIRD NEW INT'L DICTIONARY is the dictionary that the Washington  
11 Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School*  
12 *District v. State*, 90 Wn.2d at 511 and 512n.12.

13 122. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word “paramount” to  
14 mean “having a higher or the highest rank or authority” that is “superior to all others”.  
15 WEBSTER'S THIRD NEW INT'L DICTIONARY (1993) at 1638.

16 123. The Washington Supreme Court has accordingly interpreted the word  
17 “paramount” in Article IX, §1 as follows:

18 “Paramount” is not a mere synonym of “important.” Rather, it means superior in  
19 rank above all others, chief, preeminent, supreme, and in fact dominant....

20 When a thing is said to be paramount, it can only mean that it is more important  
21 than all other things concerned.

22 *Seattle School District v. State*, 90 Wn.2d at 511. This meaning of paramount is one of the  
23 reasons the Washington Supreme Court has ruled that the education mandate in Article IX, §1 “is  
24 unique among state constitutions”, and has held with respect to the Washington Constitution's  
25 use of the word paramount: “Undoubtedly, the imperative wording was intentional.” *Seattle*  
26 *School District v. State*, 90 Wn.2d at 498 and 510-11. The Washington Supreme Court has

1 accordingly held that the Respondent State must fully comply with Article IX, §1 as its “first  
2 priority”. *Seattle School District v. State*, 90 Wn.2d at 518 (underline added).

3 124. This Court concludes that the word “paramount” in Article IX, §1 means what it  
4 says. It means having the highest rank that is superior to all others, having the rank that is  
5 preeminent, supreme, and more important than all others. It is not a mere synonym of  
6 “important”. The word “paramount” means that the State must fully comply with its duty under  
7 Article IX, §1 as its first priority before all others. Article IX, §1 accordingly requires the  
8 Respondent State to amply provide for the education of all Washington children as the State’s  
9 first and highest priority before any other State programs or operations.

10 (iii) “ample”

11 125. WEBSTER’S THIRD NEW INT’L DICTIONARY is the dictionary that the Washington  
12 Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School*  
13 *District v. State*, 90 Wn.2d at 511 and 512n.12.

14 126. WEBSTER’S THIRD NEW INT’L DICTIONARY defines the word “ample” to mean  
15 “more than adequate”, and explains that the word “AMPLE always means considerably more  
16 than adequate or sufficient.” WEBSTER’S THIRD NEW INT’L DICTIONARY (1993) at 74 (underline  
17 added).

18 127. Consistent with this meaning, the Washington Supreme Court has held that  
19 Article IX, §1 requires the Respondent State to provide “fully sufficient funds” and a “level of  
20 funding that is fully sufficient” to provide for the education of all Washington children. *Seattle*  
21 *School District v. State*, 90 Wn.2d at 518 & 537 (emphasis added). Further confirming this  
22 broad meaning of “ample”, the Washington Supreme Court expressly held that it was therefore  
23 unconstitutional for the Respondent State to rely on local levies to fund any part of the education  
24 mandated by Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 526.

25 128. This Court concludes that the word “ample” in Article IX, §1 means what it says.  
26 It means considerably more than just adequate or merely sufficient. Article IX, §1 accordingly

1 requires the State's provision for the education of all Washington children to be considerably  
2 more than just adequate or merely sufficient to eke by. Article IX, §1 requires the Respondent  
3 State's provision for the education of Washington children to be ample so no public school has to  
4 turn to or rely upon local levies, PTA fundraisers, private donations, or other non-State sources  
5 to provide all of its children the "education" specified in Article IX, §1.

6 (iv) "all"

7 129. WEBSTER'S THIRD NEW INT'L DICTIONARY is the dictionary that the Washington  
8 Supreme Court used to interpret the meaning of words used in Article IX, §1. *Seattle School*  
9 *District v. State*, 90 Wn.2d at 511 and 512n.12.

10 130. WEBSTER'S THIRD NEW INT'L DICTIONARY defines the word "all" to mean "every  
11 member or individual component of", "each one of – used distributively with a plural noun or  
12 pronoun to mean that a statement is true of every individual considered", and explains with  
13 respect to a group or class: "of members of a class: each and every one of". WEBSTER'S THIRD  
14 NEW INT'L DICTIONARY (1993) at 54 (underline added).

15 131. This Court concludes that the word "all" in Article IX, §1 means what it says. It  
16 means "every" and "each and every one of". It encompasses each and every child since each  
17 will be a member of, and participant in, this State's democracy, society, and economy.  
18 Article IX, §1 accordingly requires the Respondent State to amply provide for the education of  
19 every child residing in our State – not just those children who enjoy the advantage of being born  
20 into one of the subsets of our State's children who are more privileged, more politically popular,  
21 or more easy to teach.

22 132. Having ruled on the legal meaning of "paramount", "ample", and "all" in  
23 Article IX, §1 of the Washington State Constitution, this Court now turns to the meaning of the  
24 word "education" in that Constitutional provision.  
25  
26

1 **E. QUESTION #2 (DECLARATORY JUDGMENT):**

2 **What is the current legal meaning of the word “education” in Article IX, §1?**

3 **(a) Findings of Fact relating to the current legal meaning of the word “education” in**  
4 **Article IX, §1.**

5 133. Article IX, §1 of the Washington State Constitution states:

6 It is the paramount duty of the state to make ample provision for the  
7 **education** of all children residing within its borders, without distinction or  
8 preference on account of race, color, caste, or sex.

9 Trial Exhibit 1 (bold italics added).

10 134. The parties in this case disagree on the current legal meaning of the word  
11 “education” in the above constitutional provision. E.g., Petitioners’ Amended Petition at ¶108(d)  
12 and Respondent’s Amended Answer to that Amended Petition at ¶58.

13 135. The following paragraphs outline what this Court finds to be three major  
14 historical mileposts along the evolutionary road that has led to the current legal meaning of the  
15 word “education” in Article IX, §1 of the State Constitution.

16 **(i) First Milepost (1978): State Supreme Court establishes the**  
17 **minimum knowledge and skills encompassed by the term**  
18 **“education” in Article IX, §1 [a “basic education”]**

19 136. The Washington Supreme Court issued its *Seattle School District* ruling against  
20 the Respondent State in 1978. *Seattle School District No. 1 v. State*, 90 Wn.2d 476 (1978).

21 137. That Supreme Court ruling specified the following with respect to the **minimum**  
22 of the “education” constitutionally required by Article IX, §1:

23 [T]he State’s constitutional duty goes beyond mere reading, writing and  
24 arithmetic. It also embraces broad educational opportunities needed in the  
25 contemporary setting to equip our children for their role as citizens and as  
26 potential competitors in today’s market as well as in the market place of ideas.  
Education plays a critical role in a free society. It must prepare our children to  
participate intelligently and effectively in our open political system to ensure that  
system’s survival. It must prepare them to exercise their First Amendment  
freedoms both as sources and receivers of information; and, it must prepare them  
to be able to inquire, to study, to evaluate and to gain maturity and understanding.  
The constitutional right to have the State “make ample provision for the education  
of all (resident) children” would be hollow indeed if the possessor of the right  
could not compete adequately in our open political system, in the labor market, or

1 in the market place of ideas.... The effective teaching ... of these essential skills  
2 make up the ***minimum*** of the education that is constitutionally required.

3 *Seattle School District v. State*, 90 Wn.2d at 517-18 (bold italics in original).

4 138. That 1978 Supreme Court ruling referred to the substantive skills broadly  
5 described in the above ruling as being a “basic education”. *Seattle School District v. State*, 90  
6 Wn.2d at 519. That 1978 ruling provided the Respondent State could further define that “basic  
7 education” with additional substantive content beyond the knowledge and skills described above  
8 because that description was not “fully definitive of the State’s paramount duty”. *Seattle School*  
9 *District v. State*, 90 Wn.2d at 518-19 (underline added)).

10 That 1978 Supreme Court ruling accordingly provided that the Respondent State was to  
11 (1) define additional substantive content for the above-described “basic education”, and  
12 (2) define a “program of basic education” to provide that substantive content to all Washington  
13 children. The Supreme Court’s language repeatedly made it clear that “basic education” and  
14 “basic program of education” are not synonyms. Instead, they are two distinct terms. E.g., 90  
15 Wn.2d at 482 (“The Legislature must act to carry out its constitutional duty by defining and  
16 giving substantive content to ‘basic education’ and a basic program of education”) (underline  
17 added), at 519 (noting that in 1978 the legislature had not yet passed legislation “defining or  
18 giving substantive content to ‘basic education’ or a basic program of education. Thus, the  
19 Legislature must hereafter act to comply with its constitutional duty by defining and giving  
20 substantive meaning to them.”) (underlines added), and at 537 (“We have great faith in the  
21 Legislature and its ability to define ‘basic education’ and a basic program of education”)  
22 (underline added).

23 139. In short, “basic education” is substance – the ***minimum***, basic knowledge and  
24 skills described by the Supreme Court’s above quoted ruling. A “basic program of education”,  
25 on the other hand, is exactly what it’s called – a program instituted to deliver that substance.  
26 This distinction is important. And as subsections (ii) & (iii) below explain, this Court finds that



1 in the years following the 1978 *Seattle School District* decision, the Respondent State did in fact  
2 define additional substantive content for a “basic education” in Washington that goes beyond the  
3 *minimum*, basic knowledge and skills described by the Supreme Court’s above quoted ruling.

4 (ii) *Second Milepost (1993): State legislature enacts*  
5 *House Bill 1209, which specifies additional substantive content*  
6 *beyond the “minimum” substance established by the State*  
7 *Supreme Court’s 1978 ruling.*

8 140. After the Washington Supreme Court’s 1978 *Seattle School District* ruling, the  
9 Respondent engaged in many years of study to determine substantive standards for the education  
10 that children need in order to be adequately equipped for their role as citizens in our State’s  
11 democracy, and as potential competitors in our State’s open political system, in today’s labor  
12 market, and in the market place of ideas.

13 141. In 1993, the State legislature enacted House Bill 1209 as a result of those many  
14 years of study.

15 142. The first section of House Bill 1209 explained that law’s intent to establish  
16 substantive student performance standards for Washington’s education system, stating that:

17 The legislature finds that student achievement in Washington must be improved  
18 to keep pace with societal changes, changes in the workplace, and an increasingly  
19 competitive international economy.

20 To increase student achievement, the legislature finds that the state of Washington  
21 needs to develop a public school system that focuses more on the educational  
22 performance of students....

23 The legislature further finds that improving student achievement will require  
24 (1) Establishing what is expected of students, with standards set at internationally  
25 competitive levels....

26 Trial Exhibit 14 and 133 (House Bill 1209, Sec. 1) (underline added).

143. The next section of House Bill 1209 specified the substantive content for those  
student performance standards, specifically establishing the following four areas of substantive  
knowledge and skills that all Washington students need to be equipped with:

(1) Read with comprehension, write with skill, and communicate effectively  
and responsibly in a variety of ways and settings;



- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.

Trial Exhibits 14 and 133 (House Bill 1209, Sec. 101).

144. These substantive knowledge and skills specified in these four numbered provisions in House Bill 1209, Sec. 101 are codified as the four numbered provisions in §.210 of the Basic Education Act. RCW 28A.150.210(1)-(4).

145. The phrasing of the substantive knowledge and skills specified in the four numbered provisions of §.210 of the Basic Education Act was updated in 2007. That update occurred after the Final Report of the Respondent's 18-month Washington Learns study concluded that the State should "redefine basic education" by amending §.210 of the Basic Education Act. Although the 2007 legislature ultimately did not end up adopting the Washington Learns Report's recommended wording for that redefinition, it did slightly redefine the substantive skills specified in the four numbered provisions of §.210 by amending them as follows:

- (1) Read with comprehension, write ~~with skill~~ effectively, and communicate ~~effectively and responsibly~~ successfully in a variety of ways and settings and with a variety of audiences;
- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate ~~experience~~ different experiences and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

Redline of Engrossed Second Substitute Senate Bill (E2SSB) 5841, Sec. 1 [Trial Exhibit 687].

146. The 2007 update of the four numbered provisions in Basic Education Act §.210 did not water down or lower the substantive educational standards previously established by the enactment of House Bill 1209 in 1993.

147. The knowledge and skills originally specified in the four numbered provisions of House Bill 1209 (now codified in §.210 of the Basic Education Act) are in fact the substantive content of what drives education in this State. Those four numbered provisions specify basic knowledge and skills that the State has determined a child needs to possess to be equipped to succeed in today's world. This Court accordingly finds that the four numbered provisions of Basic Education Act §.210 do in fact provide additional substantive content for the basic education of our State's children beyond the *minimum* substantive skills described by the Washington Supreme Court in its previously quoted, 1978 *Seattle School District* ruling.

***(iii) Third Milepost: State adopts Essential Academic Learning Requirements based on House Bill 1209, which specify additional substantive content beyond the "minimum" substance established by the State Supreme Court's 1978 ruling***

148. After the legislature enacted the above four numbered provisions in Basic Education Act §.210, the State established Essential Academic Learning Requirements (EALRs) for eight core academic subjects. Those eight core subjects are:

- (1) Science;
- (2) Mathematics;
- (3) Reading;
- (4) Writing;
- (5) Communication;
- (6) Social Studies: civics, economics, geography, & history;
- (7) Arts; and
- (8) Health & Fitness.

Relatively recently, the State also established Essential Academic Learning Requirements (EALRs) for a ninth core academic subject:

- (9) Educational Technology.

1  
2 149. The Respondent adopted this State's Essential Academic Learning Requirements  
3 (EALRs) in order to more specifically describe the basic skills established by the four numbered  
4 provisions of Basic Education Act §.210. The State's Essential Academic Learning  
5 Requirements (EALRs) are part of the academic instruction that the State requires for all  
6 Washington students. They specify basic skills and knowledge in core subject areas that the  
7 State expects all students to master as they move through Washington's public schools, so those  
8 children can be equipped to compete in today's world. The State's Essential Academic Learning  
9 Requirements specify basic knowledge and skills that the State has determined a child needs to  
10 possess to be equipped to succeed in today's world. This Court accordingly finds that the State's  
11 Essential Academic Learning Requirements do in fact provide additional substantive content for  
12 the basic education of our State's children beyond the *minimum* substantive skills described by  
13 the Washington Supreme Court in its previously quoted, 1978 *Seattle School District* ruling.

14 ***(b) Conclusions of Law relating to the current legal meaning of the word "education" in Article IX, §1.***

15 150. As noted earlier, it is the duty of the judiciary to interpret, construe, and enforce  
16 our State Constitution – a duty the judiciary must exercise even when its interpretation of the  
17 Constitution is contrary to that taken by another branch. And, as also noted earlier, interpreting  
18 the words used in Article IX, §1 presents a pure question of law for the judicial branch to  
19 resolve. With those two fundamental legal principles in mind, this Court now turns to  
20 interpreting the legal meaning of the term "education" in Article IX, §1.

21 ***(i) The minimum meaning of the word "education" established by***  
22 ***the Washington Supreme Court.***

23 151. The Washington Supreme Court has held the following with respect to the  
24 substantive content of the "education" mandated by Article IX, §1:

25 [T]he State's constitutional duty goes beyond mere reading, writing and  
26 arithmetic. It also embraces broad educational opportunities needed in the  
contemporary setting to equip our children for their role as citizens and as  
potential competitors in today's market as well as in the market place of ideas.

1 Education plays a critical role in a free society. It must prepare our children to  
2 participate intelligently and effectively in our open political system to ensure that  
3 system's survival. It must prepare them to exercise their First Amendment  
4 freedoms both as sources and receivers of information; and, it must prepare them  
5 to be able to inquire, to study, to evaluate and to gain maturity and understanding.  
The constitutional right to have the State "make ample provision for the education  
of all (resident) children" would be hollow indeed if the possessor of the right  
could not compete adequately in our open political system, in the labor market, or  
in the market place of ideas.

6 *Seattle School District v. State*, 90 Wn.2d 476, 517-18 (1978) (underlines added).

7 152. This trial court is bound by the above ruling of the Washington Supreme Court.

8 This trial court accordingly concludes that "education" mandated by Article IX, §1:

- 9 (a) includes the reading, writing, and arithmetic skills needed to compete in today's  
10 contemporary setting;
- 11 (b) also goes beyond merely the reading, writing, and arithmetic skills needed to  
12 compete in today's contemporary setting;
- 13 (c) must equip the children of this State to intelligently and effectively compete in  
14 today's economy and labor market;
- 15 (d) must equip the children of this State to intelligently and effectively compete in  
16 today's market place of ideas;
- 17 (e) must prepare the children of this State to intelligently and effectively participate  
18 in this State's open political system;
- 19 (f) must prepare the children of this State to intelligently and effectively exercise  
20 their First Amendment freedoms – both in communicating information to others  
21 as well as understanding information communicated from others;
- 22 (g) must equip the children of this State to meaningfully perform their roles as  
23 citizens in this State's democracy; and
- 24 (h) must prepare the children of this State to be able to inquire, to study, to evaluate,  
25 and to gain maturity and understanding in today's contemporary setting.

26 153. The Washington Supreme Court referred to the above as being "essential skills"  
in this State's democracy, and held that

the effective teaching ... of these essential skills make up the *minimum* of the  
education that is constitutionally required.

1 *School District v. State*, 90 Wn.2d 476, 518 (1978) (***bold italics in original***; underline added).

2 This Court accordingly concludes that the skills described above are essential skills in our  
3 democracy, and that the effective teaching of those essential skills make up the ***minimum*** of the  
4 “education” that is constitutionally required by Article IX, §1.

5  
6 (ii) ***The additional specification of basic knowledge and skills added***  
7 ***by the State legislature’s enactment of the four numbered***  
8 ***provisions of House Bill 1209.***

9 154. As noted earlier, the Supreme Court referred to the substantive skills broadly  
10 described in its above 1978 *Seattle School District* ruling as being a “basic education”, and  
11 provided that the Respondent State could further define that “basic education” with additional  
12 substantive content beyond the knowledge and skills described in the Supreme Court ruling  
13 quoted above because that description was not “fully definitive of the State’s paramount duty”.  
14 *Seattle School District v. State*, 90 Wn.2d at 518-19 (underline added)).

15 155. This Court concludes that the legislature complied with the *Seattle School District*  
16 Court’s direction to further define “basic education” with additional substantive content beyond  
17 the substantive knowledge and skills described in the Supreme Court ruling quoted above. This  
18 Court concludes the legislature did that by specifying the basic knowledge and skills specified in  
19 the four numbered provisions of House Bill 1209 (now §.210(1)-(4) of the Basic Education Act,  
20 RCW 28A.150.210(1)-(4)).

21 156. This Court accordingly concludes that the basic knowledge and skills specified in  
22 the four numbered provisions of House Bill 1209 (now §.210(1)-(4) of the Basic Education Act,  
23 RCW 28A.150.210(1)-(4)) are an additional, substantive component of the current legal  
24 definition of the basic “education” required under Article IX, §1.



1           (iii)    ***The additional specification of basic knowledge and skills added***  
2                   ***by the State's adoption of the Washington's Essential Academic***  
3                   ***Learning Requirements (EALRs).***

4           157. This Court concludes that after the State enacted the above four numbered  
5 provisions of House Bill 1209, the State complied further with the *Seattle School District*  
6 ruling's direction to further define "basic education" with additional substantive content beyond  
7 the knowledge and skills described in the Supreme Court ruling quoted above. This Court  
8 concludes that the State did that by adopting the basic knowledge and skills specified in the  
9 State's Essential Academic Learning Requirements (EALRs).

10          158. This Court accordingly concludes that the basic knowledge and skills specified in  
11 the State's Essential Academic Learning Requirements (EALRs) are an additional, substantive  
12 component of the current legal definition of the basic "education" required under Article IX, §1.

13           (iv)    ***Conclusion regarding the current legal meaning of the word***  
14                   ***"education" in Article IX, §1 of the Washington Constitution.***

15          159. The word "education" in Article IX, §1 is substantive. It means the basic  
16 knowledge and skills needed to compete in today's economy and meaningfully participate in this  
17 State's democracy. Today, the current definition of that requisite knowledge and skill under  
18 Washington law is defined by the following:

19           (a)    at ***minimum***, the substantive skills specified by the Washington Supreme Court in  
20 the *Seattle School District* ruling that is quoted in subsection (i) above [90 Wn.2d 476, 517-18  
21 (1978)];

22           (b)    the basic knowledge and skills enacted by the State in the four numbered  
23 provisions of House Bill 1209 that are discussed in subsection (ii) above [now §.210(1)-(4) of the  
24 Basic Education Act, RCW 28A.150.210(1)-(4)]; and

25           (c)    the basic knowledge and skills established by the State in the Essential Academic  
26 Learning Requirements that are discussed in subsection (iii) above [the State's "EALRs"].



1           160. Having now ruled on the current legal meaning of “education”, “paramount”,  
2 “ample”, and “all” in Article IX, §1 of the Washington Constitution, this Court now turns to the  
3 issue of whether the Respondent State is, or is not, complying with its legal duty under this  
4 Court’s interpretation of the language in that constitutional provision.

5  
6 **F. QUESTION #3 (DECLARATORY JUDGMENT):**  
7 **Is the Respondent State currently complying with its legal duty under this Court’s**  
8 **interpretation of the language in Article IX, §1?**

9           161. The parties disagree on whether the Respondent State is currently complying with  
10 its legal duty under Article IX, §1.

11           The Respondent asserts it is.

12           Petitioners assert that the Respondent is not.

13           This Court accordingly answers that “yes” or “no” question.

14 **(a) Findings of Fact relating to whether the State is currently complying with its legal duty**  
15 **under this Court’s interpretation of the language in Article IX, §1.**

16           162. The Respondent State uses arithmetic equations (program “funding formulas”) to  
17 calculate a dollar number for an annual dollar “allocation” to the Respondent State’s public  
18 schools. Those arithmetic equations, however, are not correlated to what it actually costs to  
19 operate this State’s public schools. Those arithmetic equations are not correlated to what it  
20 would cost this State’s public schools to equip all children with the basic knowledge and skills  
21 mandated by this State’s minimum education standards (e.g., the State’s Essential Academic  
22 Learning Requirement). Those arithmetic equations are not correlated to what it would currently  
23 cost this State’s public schools to equip all children with the basic knowledge and skills included  
24 within the substantive “education” mandated by Article IX, §1. In short, the Respondent State’s  
25 arithmetic equations do not determine the amount of resources actually required to amply  
26 provide for the education of all children residing within this State’s borders.

1        163. The actual cost of operating the State's public schools is significantly higher than  
2 the amount of resources provided by the Respondent State's arithmetic equations (program  
3 "funding formulas"). This fact is confirmed by the Respondent State's studies and public  
4 documents. It is confirmed by the Respondent State's education and finance personnel. And, as  
5 another example, it is confirmed by Superintendents of focus districts in this case.

6        164. The actual cost of equipping all children residing in this State with the basic  
7 knowledge and skills mandated by this State's minimum education standards (e.g., the State's  
8 Essential Academic Learning Requirement) is significantly higher than the amount of resources  
9 provided by the Respondent State's arithmetic equations (its program "funding formulas"). This  
10 fact is confirmed by the Respondent State's studies and public documents. It is confirmed by the  
11 Respondent State's education and finance personnel. And, as another example, it is confirmed  
12 by Superintendents of focus districts in this case.

13        165. The actual cost of equipping all children residing in this State with the basic  
14 knowledge and skills included within the substantive "education" mandated by Article IX, §1 is  
15 significantly higher than the amount of resources provided by the Respondent State's arithmetic  
16 equations (program "funding formulas"). This fact is confirmed by the Respondent State's  
17 studies and public documents. It is confirmed by the Respondent State's education and finance  
18 personnel. And, as another example, it is confirmed by Superintendents of focus districts in this  
19 case.

20        166. In short, the Respondent State's arithmetic equations (program "funding  
21 formulas") produce far less than the resources actually required to amply provide for the  
22 education of all children residing within this State's borders. The Respondent State's arithmetic  
23 equations (program "funding formulas") do not make ample provision for the facilities and  
24 services needed to equip all children residing in this State with the basic knowledge and skills  
25 included within the "education" mandated by Article IX, §1. These facts are confirmed by the  
26 Respondent State's studies and public documents. They are confirmed by the Respondent

1 State's education and finance personnel. And, as another example, they are confirmed by  
2 Superintendents of focus districts in this case.

3 167. The level of resources provided to the Respondent State's public schools,  
4 moreover, is not stable and dependable from year to year. The Respondent State does not  
5 provide its public schools stable and dependable resources to fund the actual cost of operating  
6 the State's public schools. The Respondent State does not provide its public schools stable and  
7 dependable ample resources to equip all children with the basic knowledge and skills mandated  
8 by this State's minimum education standards (e.g., the State's Essential Academic Learning  
9 Requirement). The Respondent State does not provide its public schools stable and dependable  
10 ample resources to equip all children with the basic knowledge and skills included within the  
11 substantive "education" mandated by Article IX, §1. These facts are confirmed by the  
12 Respondent State's studies and public documents. They are confirmed by the Respondent  
13 State's education and finance personnel. And, as another example, they are confirmed by  
14 Superintendents of focus districts in this case.

15 168. The Respondent State's arithmetic equations (program "funding formulas") leave  
16 the State's public schools to rely heavily on local levies to be able to operate. The Respondent's  
17 arithmetic equations leave the State's public schools to rely heavily on local levies to fund their  
18 teaching of the basic knowledge and skills mandated by this State's minimum education  
19 standards (e.g., the State's Essential Academic Learning Requirement). The Respondent's  
20 arithmetic equations leave the State's public schools to rely heavily on local levies to fund their  
21 teaching of the basic knowledge and skills included within the substantive "education" mandated  
22 by Article IX, §1. These facts are confirmed by the Respondent State's studies and public  
23 documents. They are confirmed by the Respondent State's education and finance personnel.  
24 And, as another example, they are confirmed by Superintendents of focus districts in this case.

25 169. Even with the local levies and the other non-State resources that school districts  
26 scrape together from year to year, the State's public schools are failing to equip all children

1 residing in this State with the basic knowledge and skills mandated by this State's minimum  
2 education standards (e.g., the State's Essential Academic Learning Requirement). The State's  
3 public schools are failing to equip all children residing in this State with the basic knowledge and  
4 skills included within the substantive "education" mandated by Article IX, §1. These facts are  
5 confirmed by the Respondent State's own testing of the education that has been provided to this  
6 State's public school children (the Washington Assessment of Student Learning, or "WASL").  
7 These facts are confirmed by the high school drop out rates in the State's public schools. These  
8 facts are confirmed by the significant gaps in the education of lower income and minority  
9 students in the Respondent's public schools compared to the education of those students' more  
10 privileged counterparts. These facts are confirmed by the Respondent State's studies and public  
11 documents. These facts are confirmed by the Respondent State's education personnel. And, as  
12 another example, these facts are confirmed by Superintendents of focus districts in this case.

13 170. In short, the Respondent is not amply providing for the actual cost of operating  
14 the State's public schools. The Respondent is not amply providing for the equipping of all  
15 children residing in this State with the basic knowledge and skills mandated by this State's  
16 minimum education standards. The Respondent is not amply providing for the equipping of all  
17 children residing in this State with the basic knowledge and skills included within the substantive  
18 "education" mandated by Article IX, §1.

19 **(b) Conclusions of Law relating to whether the State is currently complying with its legal**  
20 **duty under this Court's interpretation of the language in Article IX, §1**

21 171. The provisions of the Washington State Constitution are mandatory.  
22 Article I, §29 ("The provisions of this Constitution are mandatory, unless by express words they  
23 are declared to be otherwise."); *T.S. v. Boy Scouts of America*, 157 Wn.2d 416, 434 (2006); *City*  
24 *of Seattle v. Mighty Movers*, 152 Wn.2d 343, 372 (2004). The Respondent State has no  
25 discretion in whether or not it will comply with the duties mandated by the Washington State  
26 Constitution. *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 549 (1999)

1 (“Mandatory means *mandatory*.”) (italics in original). Simply put, the State of Washington must  
2 comply with the Constitution of Washington.

3 172. As explained earlier, the Washington Supreme Court holds that since  
4 Article IX, §1 of the Washington Constitution establishes the State’s paramount constitutional  
5 duty, Article IX, §1 also establishes a corresponding paramount constitutional right on the part of  
6 all children residing within our State’s borders. *Seattle School District v. State*, 90 Wn.2d at  
7 511-512 (“all children residing within the borders of the State possess a ‘right’, arising from the  
8 constitutionally imposed ‘duty’ of the State, to have the State make ample provision for their  
9 education”, and “since the ‘duty’ is characterized as Paramount the correlative ‘right’ has equal  
10 stature”). The Respondent’s constitutional duty to amply provide for equipping all children with  
11 the basic knowledge and skills established by the current definition of the “education” required  
12 by Article IX, §1 is therefore a solid constitutional floor below which the Respondent State  
13 cannot lawfully go.

14 173. There is no loophole in the Washington Constitution that allows the Respondent  
15 State’s provision for the education of this State’s children to be “slightly unconstitutional” under  
16 Article IX, §1. The Respondent’s current system of providing for the education of this State’s  
17 children is either constitutional, or it’s not. As a sister court noted in a constitutional challenge  
18 to that State’s education system:

19 This case involves the fundamental law of our land and this Court has no  
20 discretion whatsoever in whether it will be enforced and preserved. There is no  
21 higher duty of any judicial officer than to see to the adherence of government to  
our Constitutions. There is no such thing as “a little bit pregnant” and there is no  
such thing as “slightly unconstitutional.”

22 *Montoy v. State of Kansas* (case No. 99-C-1738, Shawnee County District Court, Memorandum  
23 Decision dated December 2, 2003, at second-to-last page).

24 174. The same Constitutional principle holds true here. This case involves the  
25 fundamental Constitutional law of our State, and this Court has no discretion whatsoever in  
26 whether the mandate of Article IX, §1 will be enforced and preserved. There is no higher duty of



1 any judicial officer than to ensure the government's adherence to our Constitution. There is no  
2 such thing as "a little bit pregnant", and there is no such thing as "slightly unconstitutional"  
3 under Article IX, §1.

4 175. The People of our State have not diluted our Constitution with a "failure's fine"  
5 exception to the Respondent State's Constitutional duties. This principle especially applies when  
6 the Constitutional duty at issue is the one and only duty that the People of this State enshrined as  
7 the Respondent's paramount Constitutional duty.

8 176. The question of whether the Respondent is currently complying with its legal duty  
9 under this Court's interpretation of the language in Article IX, §1 is therefore a binary yes-or-no  
10 question. The Respondent either is fully complying with its paramount Constitutional duty, or it  
11 is not.

12 177. The Respondent cannot evade this yes-or-no question of whether it is currently  
13 complying with its legal duty under Article IX, §1 by debating the extent or size of its violation  
14 of that legal duty. A defendant's disputing the extent or size of the defendant's legal violation  
15 does not negate the existence of that violation.

16 178. The Respondent cannot evade the yes-or-no question of whether it is currently  
17 complying with its legal duty under Article IX, §1 by insisting that it intends to cease its legal  
18 violation some time in the future. Thus, the Respondent State's assertions about what it hopes  
19 future State legislatures might chose to do over the course of the next nine years under the  
20 current version of ESHB 2261 are not relevant to the legal issue at hand. A defendant's intent to  
21 cease its legal violation some day does not negate the existence of the defendant's violation this  
22 day.

23 179. Nor can the Respondent evade the yes-or-no question of whether it is currently  
24 complying with its legal duty under Article IX, §1 by blaming others such as the State's school  
25 districts. Article IX, §1 imposes its paramount education duty upon the State – not upon others  
26 such as the State's school districts. E.g., *Tunstall v. Bergeson*, 141 Wn.2d 201, 232 (2000)



1 (“school districts have no duty under Washington’s constitution. Article IX makes no reference  
2 whatsoever to school districts.”). Washington law instead holds that the State’s school districts  
3 are the State’s agents in providing education to the children of this State. *Bellevue School*  
4 *District v. Brazier*, 103 Wn.2d 111, 116 (1984) (“The state has ... made the local school district  
5 its corporate agency for the administration of a constitutionally required system of free public  
6 education”). And Washington law holds that the principle cannot shift responsibility to its agent.  
7 E.g., *Orion Corp. v. State*, 109 Wn.2d 621, 643-44 (1987) (when County enacts regulation as  
8 agent of the State, the State is liable for the County regulation’s unconstitutional taking because  
9 “As the principal of an agent acting within its authority, the State must take full responsibility if  
10 a taking occurred”).

11 180. Nor can the Respondent State evade the yes-or-no question of whether it is  
12 currently complying with its legal duty under Article IX, §1 by claiming that school districts can  
13 scraping by with non-State funds such as local levies. As explained earlier, the Washington  
14 Supreme Court’s *Seattle School District* ruling against the Respondent State expressly held that  
15 it is unconstitutional for the Respondent State to rely on local levies to fund any part of the  
16 education mandated by Article IX, §1. *Seattle School District v. State*, 90 Wn.2d at 526. As the  
17 Washington Supreme Court also explained, local levies are neither dependable nor regular  
18 because they are “wholly dependent upon the whim of the electorate,” and are available only on  
19 a temporary basis. 90 Wn.2d at 525. As the Washington Supreme Court accordingly held, that  
20 “unstable statutory system destroys a district’s ability to plan for a known or definite funding  
21 base for either the current year or for future years.” 90 Wn.2d at 525.

22 181. In short, the question of whether the Respondent is currently complying with its  
23 legal duty under this Court’s interpretation of the language in Article IX, §1 is a binary yes-or-no  
24 question. This Court concludes that the answer to that question is “no”. The Respondent is not  
25 currently complying with its legal duty under Article IX, §1 of the Washington Constitution.  
26

1 The Respondent State is not complying with its *paramount* constitutional duty to make *ample*  
2 provision for the *education* of *all* children residing within the borders of this State.

3 182. This Court accordingly turns to the fourth and final part of the four-part remedy  
4 that the Petitioners seek, and the question of what (if any) enforcement Order this Court should  
5 enter to uphold and enforce the paramount duty imposed upon the State by our State  
6 Constitution.

7 **G. QUESTION #4 (ENFORCEMENT ORDER):**  
8 **What (if any) Order should this Court enter to uphold and enforce the State's legal**  
9 **duty under Article IX, §1 of the Washington Constitution?**

10 183. The parties disagree on whether this Court should enter any enforcement Order  
11 beyond the declaratory judgments sought above.

12 Petitioners contend that if this Court finds that the Respondent State is not complying  
13 with its legal duty under this Court's interpretation of Article IX, §1, then this Court should  
14 Order the Respondent to promptly establish (1) the actual cost of amply providing all  
15 Washington children with the education mandated by this Court's interpretation of  
16 Article IX, §1, and (2) how the Respondent will fully fund that actual cost with stable and  
17 dependable State sources. Petitioners content that the Respondent State can comply with such an  
18 enforcement Order by promptly implementing a State system that (1) determines the actual cost  
19 of amply providing all Washington children with the education mandated by this Court's  
20 interpretation of Article IX, §1, and (2) fully funds that actual cost with stable and dependable  
21 State sources.

22 Petitioners contend that the above is a narrowly tailored Order that would require the  
23 Respondent State to take two long overdue steps towards complying with the paramount duty  
24 clause of our State Constitution.

25 The Respondent State respectfully disagrees.  
26

1 **(a) Findings of Fact relating to the propriety of a Court Order.**

2 184. Over the past 30 years, Washington State Governors from Dan Evans and Dixie  
3 Lee Ray through Gary Locke and Christine Gregoire have sincerely declared to the People of  
4 this State their desire and intent to bring the Respondent into compliance with Article IX, §1 of  
5 our State Constitution.

6 185. In the years after the Supreme Court's *Seattle School District* ruling against the  
7 Respondent State, the legislature has conducted over 17 studies (not including research for  
8 specific legislation or projects) to address the school financing concerns of the State's public  
9 schools.

10 186. Since 1990 alone, the Respondent has also conducted over 100 K-12 education  
11 finance studies.

12 187. Despite the Respondent State's many studies and expressions of good intentions  
13 during the 30 years following the Supreme Court's *Seattle School District* ruling, the Respondent  
14 has not fully determined (or fully funded) what it actually costs to operate this State's public  
15 schools. The State has not determined (or funded) what it would cost the State's public schools  
16 to equip all children with the basic knowledge and skills mandated by the State's minimum  
17 education standards (e.g., the State's Essential Academic Learning Requirement). The State has  
18 not determined (or funded) what it would cost the State's public schools to equip all children  
19 with the basic knowledge and skills included within the substantive "education" mandated by  
20 Article IX, §1. In short, despite the passage of over 30 since the Supreme Court's *Seattle School*  
21 *District* ruling against the Respondent, the Respondent still has not determined the amount of  
22 resources actually required to amply provide for the education of all children residing within this  
23 State's borders.

24 188. Instead, as explained earlier, the Respondent uses arithmetic equations (program  
25 "funding formulas") to calculate a dollar number for an annual dollar "allocation" to the  
26 Respondent State's public schools – arithmetic equations that are not correlated to what it

1 actually costs to operate this State's public schools, what it would cost this State's public schools  
2 to equip all children with the basic knowledge and skills mandated by this State's minimum  
3 education standards (e.g., the State's Essential Academic Learning Requirement), or what it  
4 would currently cost this State's public schools to equip all children with the basic knowledge  
5 and skills included within the substantive "education" mandated by Article IX, §1.

6 189. The Respondent State has not designed or implemented a State system that  
7 (1) determines the actual cost of amply providing all Washington children with the education  
8 mandated by this Court's interpretation of Article IX, §1, and (2) fully funds that actual cost with  
9 stable and dependable State sources.

10  
11 ***(b) Conclusions of Law relating to the propriety of a Court Order***

12 190. As explained earlier, the Respondent State of Washington is required to comply  
13 with the Constitution of Washington. E.g., Article I, §29 ("The provisions of this Constitution  
14 are mandatory, unless by express words they are declared to be otherwise."); *Benjamin v.*  
15 *Washington State Bar Association*, 138 Wn.2d 506, 549 (1999) ("Mandatory means  
16 *mandatory.*") (italics in original).

17 191. An entire generation has passed through this State's public schools since the  
18 Supreme Court's *Seattle School District* ruling against the Respondent over 30 years ago. The  
19 Respondent State has no legally valid excuse to further delay or postpone its full compliance  
20 with its paramount education duty under Article IX, §1.

21 192. Given the amount of time and study that the Respondent State has already  
22 devoted to talking about complying with Article IX, §1 these past 30 years, the Respondent State  
23 has no legally valid excuse to further delay or postpone its full compliance with Article IX, §1.

24 193. This Court accordingly Orders the Respondent State to complete the following  
25 two steps towards compliance with its paramount duty under our State Constitution by no later  
26 than one year from the date of this Order: (1) establish the actual cost of amply providing all

1 Washington children with the education mandated by this Court's interpretation of  
2 Article IX, §1, and (2) establish how the Respondent will fully fund that actual cost with stable  
3 and dependable State sources. The Respondent State can comply with this Order by  
4 implementing within one year a State system that (1) determines the actual cost of amply  
5 providing all Washington children with the education mandated by this Court's interpretation of  
6 Article IX, §1, and (2) fully funds that actual cost with stable and dependable State sources.

7  
8 **III. CONCLUSION**

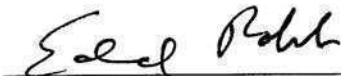
9 Counsel are directed to submit a form of Order consistent with these Findings Of Fact  
10 And Conclusions Of Law by no later than \_\_\_\_\_, 2009.

11  
12 DONE IN OPEN COURT this \_\_\_\_ day of \_\_\_\_\_, 2009.

13  
14  
15 \_\_\_\_\_  
The Honorable John P. Erlick  
State of Washington Superior Court Judge

16 Presented by:

17 FOSTER PEPPER PLLC

18 

19 Thomas F. Ahearne, WSBA No. 14844  
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20 Attorneys for the Petitioners

21 Approved as to form and for entry;  
22 Notice of presentation waived:  
23 OFFICE OF THE WASHINGTON ATTORNEY GENERAL  
ROBERT M. MCKENNA

24  
25 \_\_\_\_\_  
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[PROPOSED] FINDINGS OF FACT & CONCLUSIONS OF LAW - 57

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*[PROPOSED]* FINDINGS OF FACT & CONCLUSIONS OF LAW - 58

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KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 07-2-02323-2 SEA

The Honorable John P. Erlick

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

MATHEW & STEPHANIE McCLEARY,  
on their own and on behalf of KELSEY &  
CARTER McCLEARY, their two children  
in Washington's public schools;  
ROBERT & PATTY VENEMA, on their  
own behalf and on behalf of HALIE &  
ROBBIE VENEMA, their two children in  
Washington's public schools; and  
NETWORK FOR EXCELLENCE IN  
WASHINGTON SCHOOLS ("NEWS"), a  
state-wide coalition of community groups,  
public school districts, and education  
organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

NO. 07-2-02323-2 SEA

RESPONDENT'S PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW (CR 52)  
[August 24, 2009]

This matter came on for trial before the Honorable John P. Erlick, Judge of the Superior Court of Washington in King County. Trial commenced on August 31, 2009 and concluded on October 15, 2009.

Foster Pepper PLLC and attorneys Thomas Ahearne, Christopher Emch, Edmund Robb and Adrian Winder represented Petitioners in this case. The Washington Attorney

1 General's Office, through Assistant Attorneys General William Clark and Carrie Bashaw with  
2 Special Assistant Attorney General John Munich, represented Respondent.

3 The Court, having heard the testimony presented by the parties, having reviewed all  
4 exhibits and deposition excerpts admitted into evidence, having considered the legal  
5 memoranda and closing argument by the parties, hereby enters the following:

6 **I. FINDINGS OF FACT**

7 1. Petitioners are Mathew and Stephanie McCleary and their two children, Kelsey  
8 and Carter McCleary; Robert and Patty Venema and their two children, Halie and Robbie  
9 Venema; and the Network for Excellence in Washington Schools ("NEWS"), a corporate  
10 consortium of non-parties like the State teachers' union, the Washington Education  
11 Association, a number of school districts and local associations and advocacy groups like the  
12 Washington State PTA, the Urban League of Metropolitan Seattle and El Centro de la Raza.

13 2. The Respondent is the State of Washington.

14 3. This case concerns the constitutionality under Article IX, section 1 of the state  
15 constitution, which provides: "It is the paramount duty of the state to make ample provision  
16 for the education of all children residing within its borders, without distinction or preference  
17 on account of race, color, caste, or sex." Petitioners' seek a declaratory judgment stating that  
18 the current system for funding public K-12 schools under Article IX is unconstitutional.  
19 Petitioners also ask this Court to order the State to conduct a "*cost study*" or "*costing-out*  
20 *study*" of what "*actual*" funding is necessary to "*guarantee*" that all K-12 students meet state  
21 educational standards and to identify what specific funding sources are, or will be, available to  
22 provide that funding. Respondent State of Washington denies liability, denies that it is  
23 currently violating Article IX, and denies that the Petitioners are entitled legally or factually to  
24 the specific relief requested.

25 4. In 1977, following a trial court decision that the State's system for funding  
26 K-12 schools was unconstitutional, the Legislature enacted the Basic Education Act. That

1 Act, as amended, is found in RCW 28A.150. The Act contains three elements that together  
2 constitute the current definition of basic education: (1) education system goals, (2) education  
3 program requirements, and (3) funding ratio/formula mechanisms. The Act emphasizes that  
4 the State is providing “opportunities” for education. Since 1977, the Legislature has created  
5 other substantive programs that are part of basic education: special education under  
6 RCW 28A.155, some degree of student transportation under RCW 28A.160, the learning  
7 assistance program under RCW 28A.165, and the transitional bilingual program under  
8 RCW 28A.180. Though not declared part of basic education, the State provides funding and  
9 other support and resources for school construction and renovation.

10 5. All aspects of the policies pertaining to basic education and the funding for  
11 basic education are contained in, and governed by, Washington state statutes and regulations.  
12 Annual state funding for basic education is specifically provided in the enacted Appropriation  
13 Acts. Improvements and proposed reforms to the policies pertaining to the definition of basic  
14 education, and the programs and funding associated with basic education are also contained in  
15 statute. A challenge to the constitutionality of the State’s provision for basic education is  
16 necessarily a challenge to state statutes and/or regulations.

17 6. At the time of trial, there were 295 school districts in the state of Washington.  
18 Most, if not all, of the districts receive funding for their K-12 schools from the federal  
19 government, the State of Washington, and through their local taxing authority.

20 7. At trial, there was evidence about the history of the programs and funding for  
21 basic education. While useful to gain an understanding of the history of basic education in  
22 Washington, this history is not at issue in this case.

23 8. The process by which the State of Washington fully funds the cost of basic  
24 education involves both the executive and legislative branches. In anticipation of each  
25 biennial funding session of the Legislature, the Governor, through the Office of Financial  
26 Management (OFM), develops a proposed budget for education and other programs. The

1 Office of the Superintendent of Public Instruction (OSPI) contributes to the education budget  
2 development process by suggesting enhancements above the base funding already determined  
3 by OFM to be needed for basic education costs. OSPI has no legal authority or responsibility  
4 for establishing what funding levels are needed for the basic education program. The  
5 Legislature and Governor jointly have that responsibility. As biennial funding typically  
6 covers the ensuing two years, the K-12 education budget must necessarily forecast what will  
7 be needed, in part, based upon past historical experience. Staffing ratios and non-employee  
8 related cost factors that are contained in the Basic Education Act, as well as school-district  
9 reported and projected enrollment figures, determine and update of the annual costs of basic  
10 education. Basic education program costs then are fully funded by the Legislature through  
11 annual appropriations obtained in the State's biennial Appropriations Acts.  
12 (RCW 28A.150.380). In addition to school construction funding authorized by  
13 RCW 28A.150.270, the State also funds school construction and renovation through the  
14 separate Capital budget appropriation acts.

15 9. Following appropriations, OSPI is required to allocate the appropriated funds  
16 to the 295 school districts. The amounts provided are driven by the statutory formulae that  
17 consist of reported student enrollment, staffing ratios, salary and benefit calculations, and non-  
18 employee related costs. The allocation process conforms the forecast of cost to actual  
19 experience. If the original projections based on these formulae are off, then in the next  
20 legislative session, supplemental appropriations are made by the Legislature through the  
21 Supplemental Appropriation Acts to cover the full funding of those costs.

22 10. The evidence demonstrated that basic education funding by the State has  
23 grown steadily over time. Trends also indicate that the number of school district staff has  
24 grown exponentially, especially when compared to growth in student enrollment over the  
25 same time period.  
26

1           11. In the early 1990s, the Governor and Legislature embarked on an ambitious  
2 and far-reaching program of basic education reform, the object of which was to transform the  
3 system from one based on student “seat time” to one based on “student performance.” The  
4 difference between the two systems is illustrated as follows: Under a “seat time” system,  
5 students are promoted by grade level over the course their twelve-year career and graduate  
6 after twelfth grade. A “performance-based education system” measures how much students  
7 are learning at various stages in their twelve years of schooling and state assessment or tests  
8 measure student performance based upon state standards. Graduation from high school  
9 depends, in part, on satisfactory performance on these assessments or other approved  
10 measurement programs.

11           12. Washington’s transition to a performance-based education system was set in  
12 motion, though by no means completed, by the enactment of HB 1209 in 1993. HB 1209 set  
13 in motion a deliberate, multi-year process which included the development of the State’s  
14 Essential Academic Learning Requirements (the “EALRs”), and of the assessments to be  
15 developed and then implemented (the “WASL”) for use at different grade levels in all  
16 Washington school districts. HB 1209 contemplated that this transition would be  
17 accomplished no earlier than the 2000-2001 school year. State assessments in reading,  
18 writing, communication and math were developed and implemented within that period. The  
19 science assessment, however, was not implemented completely until the 2004-05 school year.

20           13. Funding for the expected costs of developing and implementing the transition  
21 was spelled out in HB 1209, primarily through the Appropriation Acts and grants of state  
22 funds to assist teachers and other school district staff to pay for the additional time and  
23 resources needed to implement practices to improve student learning. Along with those  
24 funding streams, in 1995, the Legislature enacted sweeping reforms to the programs and  
25 funding of special education. HB 1209 also created a Fiscal Study Committee to examine the  
26 State’s public school funding system and, by January 1995, that Committee was to report back



1 to the Legislature its findings and recommendations for a new funding model, if one was  
2 needed.

3 14. HB 1209 also provided for the development of a new statewide accountability  
4 system for all basic education subject areas and grade levels in all districts by December 1998.  
5 This deadline was later extended to June 30, 1999. The accountability system would provide  
6 information on student performance that would account for performance levels by school and  
7 by school district according to the students' gender, ethnicity, socio-economic status and other  
8 factors. The accountability system, when fully implemented, would allow the State, the  
9 school districts, and the public at large to evaluate student performance, overall and by sub-  
10 group, by school, by district and statewide.

11 15. The HB 1209 reforms were carried out by the Commission On Student  
12 Learning (CSL) which, in conjunction with OSPI and other state agencies, reported annually  
13 to the Legislature about the development of the EARLs, the development and implementation  
14 of the assessment and accounting system, and the award and allotment of the funding stream  
15 authorized by that legislation.

16 16. In 1995, the HB1209-authorized a Fiscal Study Committee to hire an  
17 independent consultant to evaluate the State's K-12 financing system and report back to the  
18 Legislature. The consultant reported: "When compared to the seven concepts of an optimal  
19 school finance system, the Washington school finance system does very well. In fact, it meets  
20 or exceeds the expectations set out by nearly all of the concepts."

21 17. The first WASL assessment results for all tested grade levels than informed the  
22 State and school districts about levels of student performance became available in 2005. The  
23 results showed that overall student performance in reading, writing and communication was  
24 good, but that performance in math and science needed improvement, particularly for certain  
25 ethnic and socio-economic groups of students. Shortly thereafter, the Legislature increased  
26 funding and changed the funding formula for the State's Learning Assistance Program (LAP)



1 that was intended to assist school districts in providing programs and services for struggling  
2 or “at-risk” students.

3 18. In 2005, the State of Washington turned its attention to the development of a  
4 new funding system for K-12 public schools. In the 2005 legislative session, the Governor  
5 sponsored and the Legislature passed E2SSB 5441 which created “Washington Learns”, a  
6 sixteen-month process for studying all sectors of the State’s education system, from early  
7 learning to the basic education K-12 system to higher education and workforce preparation.  
8 Washington Learns was the steering committee and it had three advisory committees, one for  
9 each level of education. The steering committee responsible for coordinating the feedback  
10 and reports from the advisory committees, and was chaired by the Governor. The K-12  
11 Advisory Committee was chaired by then-Superintendent Terry Bergeson. Washington  
12 Learns included a study by an out-of-state consultant, Picus and Odden, who presented  
13 “prototype” schools as a basis for examining staff compensation and potential costs of  
14 prototypical elementary, middle and high schools that could be used as a model for building a  
15 new finance structure for Washington’s schools.

16 19. Washington Learns also had the benefit of the first round of WASL test results.  
17 Key indicators for improvement of student performance included observations that 50% of  
18 children entering kindergarten were reported as not ready to succeed; 54% of minority  
19 students on average were graduating from high school on time; and 74% of high school  
20 freshman went on to graduate on time.

21 20. Washington Learns produced the final report on November 13, 2006. The  
22 report concluded, in part, that building a “world class” education system would require  
23 significant additional funds as well as the strategic reallocation of the substantial, existing  
24 educational resources. The report contemplated a number of focused initiatives to implement  
25 the transition to a “world class” system, a recommended commitment to obtain more  
26 resources and a ten-year plan of action to complete the process. “Next steps” included

1 recommendations for the design of a new K-12 funding structure and accountability system by  
2 December 2008. In addition, Washington Learns recommended a number of more immediate  
3 steps that the Legislature adopted during the 2007 legislative session.

4 21. Because of the need to further review the financing structure for basic  
5 education, the 2007 Legislature enacted statutory authorization for the creation of the Basic  
6 Education Finance Task Force (Task Force), to carry on the work of Washington Learns and  
7 develop detailed recommendations for a new funding system for K-12 public schools. The  
8 Task Force was directed to complete its work and issue a comprehensive report and set of  
9 recommendations by December 2008 so that the Legislature would have the opportunity to  
10 take action on some or all of the recommendations beginning in the 2009 legislative session.

11 22. From the fall of 2007 through December 2008, the Task Force conducted  
12 numerous meetings and heard many presentations from educators, school districts, and state  
13 agencies about the need for, and components of, a new approach to basic education funding  
14 and accountability. In the summer of 2008, the Task Force received a number of proposals,  
15 including the one that the Task Force substantially adopted in the fall of 2008. The successful  
16 proposal was developed and sponsored by the six state legislators on the Task Force. The  
17 other proposals, including one proposed by the Petitioners' expert, Dr. David Conley, were  
18 rejected.

19 23. The final Task Force report and recommendation was unanimously adopted by  
20 its members and issued on January 14, 2009. The report contained detailed staffing models  
21 and prototypical schools for each school level. The report proposed reduced class sizes, early  
22 learning programs for three and four-year-olds from families with low incomes, increased  
23 funding for struggling students, students with disabilities and for students whose primary  
24 language was not English. The report called for significant changes in the qualifications,  
25 promotion and compensation of teachers, and recommended substantial increases in state  
26 funding to offset the costs of utilities, insurance, supplies, technology and other non-employee

1 costs. The report called for increased quality review and accountability by all entities and  
2 players in the educational delivery system.

3 24. The Task Force report contained three significant observations: the estimated  
4 cost of reform, the extended period of time necessary for implementation of any  
5 recommended changes, and a forecast of the hoped-for benefits of making the investment.  
6 Cost estimates range from 6.3 to 8.9 billion dollars per biennium. The Task Force indicated  
7 that implementation would need to take at least six years following the enactment of reform  
8 legislation. Finally, the Report contained an analysis that student outcome might improve by  
9 an estimated 9% (nine percent) rise in the State's graduation rate 14 years after full  
10 implementation of the Task Force recommendations. Alternatively, the same analysis  
11 forecasted that if substantial sums of increased state funding occurred without reform of  
12 current basic education policies, graduation rates might increase by a factor of less than 1%  
13 (one percent) over the same 14-year time frame. The Washington State Institute for Public  
14 Policy (WSIPP) produced these projections.

15 25. The Washington State Institute for Public Policy cautioned that the projections  
16 identified in the preceding paragraph reflected the findings of national research indicating that  
17 the true link between funding and outcomes was uncertain.

18 26. Immediately after issuance of the Task Force Report, legislators introduced  
19 two bills calling for the enactment of many Task Force recommendations into law. These  
20 bills were withdrawn after virulent opposition by one of the principal members of NEWS, the  
21 Washington Education Association (WEA) also known as the teacher's union.

22 27. The withdrawn bills were replaced by what eventually was enacted (again,  
23 over vigorous objections and lobbying by the WEA) as HB 2261. The new law took a more  
24 measured approach to enactment and implementation of the Task Force recommendations,  
25 with full implementation by 2018. The enactment created a Quality Education Council (QEC)  
26 to oversee the implementation of reforms and funding options. Teacher certification standards

1 would be in place for the 2011-12 school year. Work groups would develop and recommend  
2 enhanced staff compensation models, a new system for local funding to supplement other  
3 funding for K-12 education, the development and implementation of a comprehensive data  
4 system tracking and coordinating teacher and student performance and a standardized,  
5 statewide accounting system.

6 28. HB 2261 specified the structure, mechanisms and deadlines for continuing the  
7 State's K-12 reform. Overall funding levels and potential tax sources for funding were not  
8 included as those issues are to be addressed by the Funding Formula Technical Work Group  
9 and by the QEC. Changes requiring legislative enactment are to be adopted by the  
10 Legislature, if deemed appropriate, with full implementation of HB 2261 to be completed by  
11 2018.

12 29. The enactment of HB 2261 was endorsed by educators, school districts and by  
13 state and local officials. Indeed, endorsers included many of the constituent members of  
14 NEWS.

15 30. Petitioners argue that increased educational expenditures and the introduction  
16 of specific educational interventions such as reduced class sizes, teacher salary increases and  
17 pre-kindergarten programs will improve the educational results in Washington and are  
18 constitutionally required as part of a basic system of education. The Court rejects Petitioners'  
19 arguments for several reasons.

20 31. This case is not about what might improve Washington's educational system,  
21 which already performs at a high level. For example, Washington students perform among  
22 the top one-third of states on the National Assessment of Education Progress (NAEP),  
23 commonly called "The Nation's Report Card." Moreover, among states that have 25% or  
24 more of their students taking the SAT, a test of college-readiness, Washington students rank  
25 first in the nation. In another ranking, calculated by the American Legislative Exchange  
26

1 Council (ALEC), Washington ranks 12th in the nation, considering its NAEP, SAT and ACT  
2 scores. This is not a low-performing system failing to meet the constitutional mandate.

3 32. Instead, this case concerns whether the resources and opportunities present in  
4 Washington schools are so deficient as to deny the State's students with the opportunity for a  
5 "basic education." Based on the testimony of the State's three education experts who visited  
6 over 500 classrooms in the State, and the photographs taken in the schools visited by these  
7 three educators, the Court is convinced that Washington schools enjoy a level of teaching and  
8 resources sufficient to provide their students an opportunity to receive a "basic education."  
9 Overall, these are not under-resourced schools that deprive Washington's students of the  
10 opportunity for a basic education.

11 33. In addition to the above, the Court is persuaded by the national and  
12 Washington-specific data presented by Respondent's experts' showing that there is no  
13 systematic relationship between education expenditures and student achievement, both within  
14 Washington and across the nation. Many of Washington's highest performing districts are  
15 among its lowest spending, and conversely, many of the State's lowest performing districts are  
16 among its highest spending. Moreover, roughly 90% of the variations observed among  
17 Washington students' WASL results occurred within single districts, whereas 10% or less of  
18 the variations occurred across school districts. Taking the evidence as a whole, the Court  
19 concludes that, at best, there is significant uncertainty among education experts as to whether  
20 Petitioners' proffered requests for relief and proposed interventions could be replicated on a  
21 state-wide basis and whether their requests would systematically improve the achievement of  
22 Washington's students.

23 34. Respondents' evidence further showed that in several states where long-  
24 running school funding litigation resulted in dramatically higher spending and the introduction  
25 of many of the very interventions Petitioners advocate for here, the hoped for gains in student  
26 achievement were at best disappointing, if non-existent.



1        35. While Petitioners point to isolated issues in some of the focus districts, these do  
2 not rise to the level of a constitutional violation. Many of the identified structural issues relate  
3 to simple maintenance items or problems that can be resolved with a little attention and  
4 minimal resources. For example, Petitioners identified as a problem one district that had long  
5 weeds growing outside its enclosed baseball field. The simple solution would be to mow it or  
6 take simple weed control measures. Moreover, to the extent that there are issues relating to  
7 recruitment of certain categories of teachers (*e.g.*, math, science and special education), issues  
8 relating to teacher remediation courses available only at the university level, and so on, these  
9 are national issues, existing even in states that vastly outspend Washington's K-12 education  
10 budget. They are not the result of under-funding by the State of Washington.

11        36. Petitioners also argue that low test scores among certain segments of the  
12 Washington's student enrollment point to constitutional inadequacies in the system, but the  
13 Court disagrees. The evidence was uncontroverted that poverty and other family factors  
14 dramatically depress student achievement, well before the first day the affected student steps  
15 into a Washington classroom. Despite years of research, educators and education researchers  
16 have not yet discovered sure-fire, in-school interventions that can systematically overcome the  
17 results of these powerful influences across an entire school district, much less an entire state.  
18 The so-called achievement gap exists in all states, even those that vastly outspend Washington.  
19 Washington, as all states, continues to research ways to improve the performance of its  
20 disadvantaged students, but their lower achievement does not reflect a constitutional defect in  
21 the system of education and education funding in Washington.

22        37. Petitioners also assert that lower levels of proficiency on the math portion of the  
23 WASL and less than 100% proficiency on the reading segment are evidence of a constitutional  
24 violation in the State's system of education, but the Court disagrees. First, the reading portion  
25 of the WASL reflects a very high overall rate of proficiency (90%), and as mentioned,  
26 Washington students score well in other measurements of student performance, especially



1 compared to the other states. Second, the state constitution requires the opportunity for a basic  
2 education not the guarantee of certain outcomes. Especially given the pernicious effect on  
3 achievement of out-of-school factors such as poverty, as described above, it is unwarranted and  
4 unreasonable to argue that less than 100% proficiency on student assessments or graduation  
5 rates evidences the lack of an opportunity for a basic education or evidences a constitutional  
6 violation. Third, to the extent Petitioners rely on lower WASL math proficiency rates, the  
7 Court credits testimony that the math examination requires review to ensure that it is properly  
8 calibrated and that it aligns properly with what is being taught in Washington's schools. Lower  
9 WASL math scores most likely represent a misalignment of teaching and testing, and do not  
10 necessarily reflect widespread math deficiencies among Washington's students. Moreover,  
11 Washington's standards are very high in comparison to other states, ranking among the highest  
12 and most stringent in the nation. The Court therefore rejects Petitioners' arguments on this  
13 point.

14 38. The Court finds that good teachers are part of a high quality system of education  
15 and that Washington's public schools are staffed by experienced, qualified, competitively paid  
16 teachers and, as a result, the State enjoys a remarkably stable teaching force.

17 39. The testimony at trial showed that, on average, Washington's public school  
18 teachers possess 13 years of experience.

19 40. The evidence established that nearly 100% of the State's public school teachers  
20 have a bachelor's degree, and an ever-increasing number are earning post-graduate degrees.

21 41. Respondent's expert witness testimony demonstrated that nearly 100% of  
22 Washington's public school teachers are "highly qualified" under the federal No Child Left  
23 Behind Act.

24 42. The Court finds that the State's public school teachers are competitively paid.  
25 Washington's public school teachers earn almost 15% more on average than overall private  
26

1 sector pay. Moreover, the salaries paid to Washington's teachers compare favorably to the pay  
2 earned in other, similar occupations.

3 43. The evidence at trial also illustrated that public school teachers in Washington  
4 enjoy good working conditions, including a decreasing pupil-teacher ratio and assistance from  
5 aides and counselors.

6 44. The Court also finds that Washington's teaching force is incredibly stable and  
7 contrary to Petitioners' assertions, teachers are not moving or changing districts frequently.

8 45. Washington's public schools benefit from the lowest teacher turnover rate in the  
9 region.

10 46. Respondent's expert witness testimony established that approximately 90% of  
11 teachers in Washington choose to teach in the same school each year, with an additional 2-3%  
12 opting to remain in the State, albeit in a different district.

13 47. Based on this evidence and the testimony at trial, the Court finds no merit in  
14 Petitioners' contention that more funding is needed to provide a "continuing supply of high  
15 quality teachers."

16 48. The Court finds that the existing teaching force in Washington's public schools  
17 is already providing and will continue to provide adequate basic educational opportunities to  
18 Washington's students.

19 49. As discussed in paragraph 35 above, the Court heard testimony from experts Dr.  
20 John Murphy, Dr. Rick Melmer and Mr. Eldon Lonborg (collectively "school visit experts")  
21 regarding the condition of and resources in Washington's public schools.

22 50. The Court finds that, as life-long educators, superintendents and public servants,  
23 the school visits experts are qualified to offer opinions regarding the facilities and resources in  
24 Washington's public schools.

1        51. These experts visited schools and classrooms in the 13 focus districts.  
2 Testimony presented at trial revealed that in some districts all of the schools were visited,  
3 while in other, larger districts, at least one-fourth to one-third of the schools were observed.

4        52. The Court finds that the school visit experts visited a sufficient number of  
5 schools and classrooms to offer valid opinions concerning the facilities and resources available  
6 to public school students in this state.

7        53. The testimony at trial established that, in each of the schools they visited, the  
8 school visit experts observed the facilities, resources and instruction to determine whether  
9 children were receiving adequate educational opportunities.

10       54. The testimony of these experts supports the conclusion that Washington's public  
11 schools are in good physical condition and that no facilities issues inhibit student learning.

12       55. The school visit experts also universally concluded that the State's schools have  
13 adequate, and in many cases above adequate, resources, including textbooks, well-maintained  
14 classrooms and public areas, adequate physical education and athletic facilities, technology and  
15 access to classes such as health, music and art.

16       56. The testimony of the school visit experts also established that the quality of  
17 instruction in Washington's public schools is high and that teachers were actively engaged in  
18 teaching, and students were actively engaged in learning.

19       57. Based upon this evidence, the Court rejects Petitioners' assertions that  
20 Washington's public schools' prevents students from receiving adequate educational  
21 opportunities. To the contrary, the State of Washington provides its students with well-  
22 maintained facilities, adequate instructional resources and engaging, effective instruction.

23       58. Respondent's evidence established that Washington's school districts  
24 themselves make policy choices for their schools. This testimony demonstrated that a district's  
25 choice about how to allocate its resources is not indicative of an underfunded school system.  
26

1       59. The Respondent's evidence also illustrated that districts are free to use their  
2 funding in unique ways like merit pay or increased teacher salaries in hard-to-staff subjects.

3       60. Based on this evidence, the Court finds that to the extent funding shortages exist  
4 within districts, the local choices made by those districts are oftentimes accountable for the  
5 shortfalls.

6       61. Petitioners' evidence that the current system or funding for basic education is  
7 constitutionally insufficient is unpersuasive, particularly in light of the above Findings. The  
8 Court finds this evidence does not demonstrate that the State is violating Article IX, section 1  
9 of the Washington state Constitution.

10       62. Furthermore, Petitioners evidence concerning the programs, services or  
11 interventions that are not currently in basic education, while beneficial and well-intentioned,  
12 do not rise to the level of constitutional imperatives in providing students with the opportunity  
13 to obtain a basic education.

14       63. Moreover, while the evidence shows that local school districts provide funding  
15 for K-12 education, the Court is unable to determine whether, and to what extent, local funds  
16 have been used to provide basic education services.

17       64. Cost studies such as that performed by Petitioners' expert, Dr. David Conley,  
18 are unreliable and not appropriate and they do not establish a connection between increased  
19 spending on education and successful student outcomes.

20       65. Cost studies—and Dr. Conley's work, in particular—do not provide a rational  
21 basis for informing the Legislature about decisions regarding education policy, programs or  
22 funding.

23       66. In contrast, HB 2261 and its expected reforms do reflect a rational basis for  
24 legislative decisions about education policy, programs and funding, all of which are the  
25 Legislature's prerogative to establish.  
26

67. The evidence does not demonstrate dilatory conduct, inaction or inattentiveness by the State regarding K-12 public education.

68. Petitioners have failed to prove that the State's definition, programs and funding for basic education are unconstitutionally inadequate.

69. Even if Petitioners had successfully borne their burden of proof, the State's reforms, both enacted and anticipated, would resolve all matters complained of through means selected by the legislative and executive branches of government.

## II. CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this dispute. Venue in this county is appropriate.

2. The acts of the State, acting through the Governor, the Legislature and the Office of the Superintendent of Public Instruction, that are subject to scrutiny are those acts that reflect the State's current basic education programs and funding processes. What occurred beforehand may have historical relevance, but is not what is judged here.

3. With respect to a challenge under Wash. Const. Art. IX, §§ 1 and 2, a court must presume that the actions of the Legislature are constitutional; a party challenging a legislative act or statute must prove it unconstitutional beyond a reasonable doubt; the preponderance of evidence standard is applicable to questions of fact and the beyond a reasonable doubt standard is applicable to review of constitutional issues of law; and, the judiciary should defer to the Legislature, and restrain its role to providing only broad constitutional guidelines within which the Legislature may work.

4. The Legislature has the exclusive authority to establish basic education policy and select the means to discharge its obligations under Wash. Const. Art. IX, §§ 1 and 2. Those obligations are, generally, the definition, full funding and reform of basic education programs and policies. All current aspects of basic education and its funding are contained in the Basic Education Act and related statutes pertaining to special education, LAP and ELL

1 programs and transportation. Appropriations for basic education are made through annual  
2 Appropriation Acts. Efforts to improve and reform basic education are accomplished through  
3 legislation.

4 5. The Supreme Court has interpreted and given legal effect to the terms of  
5 Article IX, section 1, of the state constitution. That provision means that the State has the  
6 duty to define, fully fund and, as the Legislature deems appropriate, to reform the policies and  
7 program of basic education. Petitioners' request that this Court define those terms is denied.

8 6. Petitioners' claim in this case is a constitutional challenge to the State's  
9 funding and policies pertaining to basic education. Such a claim attaches the constitutionality  
10 of enacted State law. As such, the claim is either (or both) a facial challenge or an "as  
11 applied" challenge. The task of the Court when deciding a facial challenge to legislation is to  
12 determine whether the statute or act is unconstitutional on its face without regard to the  
13 manner in which it is enforced. A facial challenge must be rejected unless there is no set of  
14 circumstances in which the law can constitutionally be applied.

15 7. Providing opportunities so that all Washington K-12 public school students  
16 may have a chance to achieve successful educational outcomes describes the State's  
17 Article IX duty. However, the State does not have an obligation under Article IX to guarantee  
18 or ensure any student's successful educational outcome.

19 8. While the State's duty under Article IX, section 1, is to provide opportunities,  
20 it is the responsibility of the student(s) and families to take advantage of those opportunities to  
21 achieve successful academic outcomes.

22 9. The statutes governing basic education and the annual appropriation acts for  
23 basic education are not unconstitutional beyond a reasonable doubt on their face or as applied.  
24 The statutory amounts appropriated in the current and past years are not on their face or as  
25 applied so deficient that the appropriations are unconstitutional.  
26



1        10.    Petitioners' allegations that the State is failing its Article IX duties are not  
2 supported by the evidence. Nor does that evidence prove beyond a reasonable doubt that the  
3 State's definition, programs or funding of basic education are unconstitutional.

4        11.    Petitioners' allegations that the State should include as part of basic education  
5 programs for early learning, for highly capable students, for reduced class sizes, for increased  
6 compensation for non-basic education staff, for learning improvement days, for food service  
7 programs, for extra-curricular activities and for teacher compensation, that is bargained for  
8 locally and paid with local funds, are not supported by the evidence. These assertions do not  
9 establish constitutional imperatives to warrant judicial intervention in how the other branches  
10 of government provide the means of implementing Article IX.

11       12.    Because Article IX includes the Legislature's duty to reform basic education,  
12 as needed, Petitioners cannot meet their burden of proving unconstitutionality where, as here,  
13 the State shows that program(s) and/or funding are under consideration by the Legislature,  
14 and that decisions will be made as the Legislature deems appropriate.

15       13.    HB 2261 represents a comprehensive, constitutionally permissive legislative  
16 effort to reform education and addresses the alleged liability and requested remedy issues in  
17 this case. HB 2261 is the basis upon which this Court concludes that Petitioners cannot have  
18 their requested remedy which effectively asks this Court to override the Legislature's effort in  
19 adopting HB 2261. Petitioners have not met their burden of proof in this case.

20       14.    The remedy requested by Petitioners is not appropriate under Washington law.  
21 Moreover, the evidence is insufficient to warrant judicial intervention and is insufficient to  
22 justify relief that is tantamount to a writ of mandamus or a mandatory injunction against  
23 coordinate branches of state government.

24       15.    Appropriations for K-12 public education that are funded from the State's  
25 General Fund are from regular and dependable tax sources and are constitutional under  
26 Article IX.

16. “Basic education” under Article IX applies to all children in grades kindergarten to twelfth grade and between ages 5 and 18. .

17. Supplemental or TRI compensation for public school certificated instructional staff are not part of an Article IX constitutional analysis. There is no basis to declare RCW 28A.400.200 unconstitutional.

18. Petitioners' claims and the Amended Petition will be dismissed with prejudice.

DATED this 28<sup>th</sup> day of August, 2009.

ROBERT M. MCKENNA  
Attorney General

William F. Clark

WILLIAM G. CLARK, WSBA #9234  
CARRIE L. BASHAW, WSBA #20253  
Assistant Attorneys General  
Attorneys for Respondent

1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record  
3 on the date below as follows:

4 ☒ ABC/Legal Messenger

5 I certify under penalty of perjury under the laws of the state of Washington that the  
6 foregoing is true and correct.  
7

8 DATED this 28<sup>th</sup> day of August, 2009, at Seattle, Washington.

9  
10   
11 AGNES ROCHE

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09 OCT 26 PM 3:31

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 07-2-02323-2 SEA

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

**Cause No. 07-2-02323-2 SEA**

**Mathew McCleary, et al.  
vs.  
State of Washington**

**WITNESS RECORD (CIVIL)  
(WTRC)**

<b>Witness for:</b>	<b>Name and Address (with zip code)</b>	<b>Date(s) Witness Testified</b>
<b>Petitioners</b>	Michael S. Blair P.O. Box 65435 Port Ludlow, WA	August 31, 2009 Sept. 1, 2009
<b>Petitioners</b>	Kenneth A. Emmil 749A Paul Road Colville, WA	Sept. 2, 2009 Sept. 3, 2009
<b>Petitioners</b>	Dr. Judith A. Billings 9821 74 <sup>th</sup> Avenue East Puyallup, WA	Sept. 3, 2009 Sept. 8, 2009
<b>Petitioners</b>	Rep. Skip Priest Legislative Building Olympia, WA	Sept. 8, 2009 Sept. 9, 2009
<b>Petitioners</b>	Erin Jones 7177 Radius Loop SE Lacey, WA	Sept. 9, 2009 Sept. 21, 2009
<b>Petitioners</b>	Jennifer Priddy 7340 Boston Harbor Road Olympia, WA	Sept. 10, 2009 Oct. 12, 2009

## WITNESS RECORD (CIVIL)

**King County Cause No. 07-2-02323-2 SEA**  
**Mathew McCleary, et al. vs. State of Washington**

<b>Witness for:</b>	<b>Name and Address (with zip code)</b>	<b>Date(s) Witness Testified</b>
<b>Petitioners</b>	Daniel K. Grimm 2816 - 10 <sup>th</sup> Street Court SE Puyallup, WA	Sept. 14, 2009
<b>Petitioners</b>	Benjamin Soria 4402 Scenic Drive Yakima, WA	Sept. 14, 2009 Sept. 15, 2009
<b>Petitioners</b>	Prof. Roger Soder 10242 Belgrove Court NW Seattle, WA	Sept. 15, 2009 Sept. 16, 2009
<b>Petitioners</b>	Mary Jean Ryan 1802 NE 73 <sup>rd</sup> Street Seattle, WA	Sept. 16, 2009 Sept. 17, 2009 Sept. 22, 2009
<b>Petitioners</b>	Steve Aos Wash. St. Institute for Public Policy Olympia, WA	Sept. 17, 2009
<b>Petitioners</b>	James Kelly 23121 50 <sup>th</sup> Ave. South Kent, WA 98032	Sept. 21, 2009
<b>Petitioners</b>	Roberto Maestas 254 16 <sup>th</sup> Ave South, Seattle, WA 98144	Sept. 21, 2009
<b>Respondent</b>	Dr. Eric Hanushek, Expert Witness 1092 Cathcart Way Stanford, CA	Sept. 23, 2009
<b>Petitioners</b>	Dr. Nicholas Brossoit 6529 200 <sup>th</sup> Street SW, #202 Lynnwood, WA 98036	Sept. 24, 2009 Sept. 30, 2009
<b>Respondent</b>	Dr. David Armor 17246 Pepperstock Lane Jeffersontown, VA	Sept. 24, 2009
<b>Respondent</b>	Victor Moore Insurance Building, Suite 300 Olympia, WA 98502	Sept. 29, 2009
<b>Respondent</b>	Julie Salvi Office of Financial Mgmt. PO Box 43113 Olympia, WA 98504-3113	Sept. 29, 2009 Oct. 15, 2009
<b>Respondent</b>	Ben Rarick 9640 Hyperhill Rd. SE Olympia, WA 98513	Sept. 30, 2009 Oct. 1, 2009
<b>Respondent</b>	Calvin W. Brodie 2718 Fifth Street SW Puyallup, WA	Oct. 8, 2009

# WITNESS RECORD (CIVIL)

King County Cause No. 07-2-02323-2 SEA  
Mathew McCleary, et al. vs. State of Washington

Witness for:	Name and Address (with zip code)	Date(s) Witness Testified
<b>Respondent</b>	Dr. Robert M. Costrell 201 Graduate Education Building University of Arkansas Fayetteville, AR	Oct. 13, 2009
<b>Respondent</b>	Dr. John A. Murphy 6711 North Ocean Blvd. Ocean Ridge, FL	Oct. 13, 2009
<b>Respondent</b>	Eldon S. Lonborg 2131 South Bank Road Oakville, WA	Oct. 13, 2009 Oct. 14, 2009
<b>Respondent</b>	Dr. Lori L. Taylor 312 Agate Drive College Station, TX	Oct. 14, 2009
<b>Respondent</b>	Dr. Rick Melmer 908 Valley View Drive Vermillion, SD	Oct. 14, 2009 Oct. 15, 2009
<b>Respondent</b>	Dr. Michael J. Wolkoff 8 Pinnard Street Rochester, NY	Oct. 15, 2009



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KING COUNTY, WASHINGTON

OCT 26 2009

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## LIST OF EXHIBITS

(EXLST)

CAUSE NO. 07-2-02323-2 SEA

CAPTION:

Mathew and Stephanie McCleary, et al.

Plaintiff / Petitioner

VS.

State of Washington

Defendant / Respondent

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LEGEND:

Π= Petitioner  
Λ= Respondent  
A = Admitted  
AN = Admitted but not to go to jury  
R = Refused  
Re-O&A = Re-offered and Admitted  
ID = For Identification Only  
Rtn'd = Returned

CODES:

Cause No. 07-2-02323-2 SEACaption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	338 II	194 A	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
1	X		Article IX, Section 1 to the Washington State Constitution	A	8/31/09				
2	X		Seattle School District v. State, 90 Wn.2d 476, pages 517-518	A	09/23/09				
3	X		Website printout, bio of Terry Bergeson				X	X	
4	X		Curriculum & Instruction, Essential Academic Learning Requirements (EALR)	A	9/8/09				
5	X		Curriculum & Instruction, EALR, pages 1 & 2	A	9/23/09				
6	X		EALR - Reading	A	9/23/09				
7	X		EALR - Mathematics	A	9/23/09				
8	X		EALR - Science	A	10/20/09				
9	X		EALR - Writing	A	10/20/09				
10	X		EALR - Communication	A	10/20/09				
11	X		EALR - Social Studies: Geography, History, Civics, Economics	A	9/16/09				

*Notebook @ 1A*

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
12	X		EALR - The Arts	A	10/20/09				
13	X		EALR - Health and Fitness	A	10/20/09				
14	X		Engrossed Substitute House Bill 1209, Effective Date 7-25-93	A	09/23/09				
15	X		2006 Reaching Higher: Learning Goals and Assessments for Washington Students in Grades 3-8	A	09/23/09				
16	X		Washington Learns: World-Class, Learner- Focused, Seamless Education, Nov. 2006	A	9/8/09				
17	X		2005 WASA/AWSP Summer Conference - Success for all Students: Progress Made, Challenges Ahead	A	09/23/09				
18	X		RFP No. 06-800 - K-12 Funding Analysis	A	09/23/09				
19	X		Engrossed Second Substitute Senate Bill 5441, Effective Date 7-24-05	A	09/23/09				
20	X		Proposed 2007-2009 Budget Recommendation Summaries, Dec. 2006	A	09/23/09				
21	X		Notice of 30(b)(6) Deposition (Brodie)	A	10/8/09				
22	X		Chimacum School District (SD), F-195 Budget for Fiscal Year 2007-2008				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
23	X		Chimacum SD, F-195 Budget for Fiscal Year 2006-2007				X	X	
24	X		Chimacum SD, F-196 Annual Financial Statements 2007-2008				X	X	
25	X		Chimacum SD, F-196 Annual Financial Statements 2006-2007				X	X	
26	X		Administrative Budgeting & Financial Reporting (ABFR) Handbook of Policies & Procedures for Public SDs, May 2006	A	10/8/09				
27	X		Bulletin 039-06, School Apportionment and Financial Services, 5-5-06				X	X	
28	X		ABFR for 2007-2008, Effective Date, 9-1-99				X	X	
29	X		Financial Reporting Summary: School District and Educational Service District, Fiscal Year 9/1/06 – 8/31/07, March 2008	A	10/8/09				
30	X		Accounting Manual for Public School Districts, September 2007	A	9/10/09				
31	X		Bulletin 025-07, School Apportionment and Financial Services, 5-10-07				X	X	
32	X		Addendum to Bulletin 025-07, 8-17-07	A	9/10/09				
33	X		Accounting Manual for Public School Districts, September 2006				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	Π Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
34	X	IMAP Kids website printout [imapkids.com]	A	9/2/09				
35	X	Concern for Absences and Tardies, from Chimacum SD to McCleary	A	9/2/09				
36	X	E-mail from Skei to Jones dated 11-13-08, Re Budget Drivers Schedule				X	X	
37	X	E-mail from Skei to Jones and others, dated 11-14-08, Re Budget Drivers Schedule				X	X	
38	X	E-mail Re Comparable Wage, 11-25-08				X	X	
39	X	E-mail from Rarick to Aos and others, dated 11-16-08, Re Comparison Matrixes				X	X	
40	X	E-mail from Aos to Rarick from others, dated 11-18-08, Re BE Proposals				X	X	
41	X	E-mail from Greef to Aos & others, 12-1-08, Re Cost Estimate of Task Force Proposal				X	X	
42	X	Letter to Rep. Frank Chopp from Mary Jean Ryan, dated 1-15-09				X	X	
43	X	Declaration of Julie Salvi In Opposition to Mtn for Summary Judgment, 5-18-07	A	10/1/09				
44	X	Development of Student Transportation Funding Methodology Options, 11-21-08				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
45	X		K-12 Pupil Transportation Funding Study, Report 06-10, 11-29-06				X	X	
46	X		Interrogatory Numbers 3 And 4 And Respondent's Answers Thereto				X	X	
47	X		Interrogatory Numbers 3 & 4 & Respondent's 2009 Amended Answer				X	X	
48	X		Basic Education Costs By School Year, dated February 2007	A	10/1/09				
49	X		Substitute House Bill 1314, 4-27-01				X	X	
50	X		Basic Education Costs By School Year, dated February 2007	A	10/1/09				
51	X		E-mail from Forsyth to Salvi and others, dated 3-27-08, with attached Student Transportation Funding: Alternative Models				X	X	
52	X		Pupil Transportation Funding Formula Options, 12-5-08	A	10/1/09				
53	X		Overview of Current Salary Structure and Alternative Compensation Structure, 5/12/04				X	X	
54	X		K-12 Funding: How Does the State Distribute Revenue To School Districts? 10-5-01	A	10/15/09				
55	X		Proposed 2009-11 Budget & Policy Highlights				X	X	



Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
56	X		Governor Gregoire's Proposed 2009-11 Biennial Budget, K-12 Policy Changes	A	9/29/09				
57	X		E-mail from Pennucci to Skei dated 7-30-08, with attached WASL Analysis of Student Achievement Data / Assessment Alternatives	A	9/17/09				
58	X		E-mail from Pennucci to Skei & others, 10-18-07, with attached Basic Education Finance Initial Report to Joint Task Force				X	X	
59	X		E-mail from Lieb to Skei and others, dated 11-23-07, re Meeting Date				X	X	
60	X		E-mail from Skei to Pennucci and others, dated 12-3-07, Re PAS Participation				X	X	
61	X		E-mail from Skei to Jones and others, dated 3-6-08, with attached Fuel Cost Increases				X	X	
62	X		E-mail from Skei to Jones dated 3-27-08, Re Funding Commentary				X	X	
63	X		Proposed 2009-2011 Budget & Policy Highlights, December 2008				X	X	
64	X		Governor Gregoire's Proposed 2009-11 Biennial Budget, Dept. of Early Learning				X	X	
65	X		OSPI Transition Divisional Briefing: K-12 Financial Resources, 12-12-08				X	X	
66	X		School District Personnel Summary Reports, 2007-2008 School Year, October 2008	A	9/10/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	Π Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
67	X	Public schools: Depth, Breadth And Causes Of A Looming Finance Crisis	A	9/10/09				
68	X	E-mail from Priddy to Morrill dated 9-16-08, with attached K-12 Finance: Looming Problems, Presentation to Renton SD	A	9/10/09				
69	X	A Funding System To Support Student Success, 6-9-08, various slides				X	X	
70	X	A Funding System To Support Student Success, 6-9-08, various slides				X	X	
71	X	A Funding System To Support Student Success, 6-9-08	A	9/10/09				
72	X	K-12 Financial Outlook				X	X	
73	X	Proposal For A New K-12 Finance Structure				X	X	
74	X	Education Reform And Implications For School Finance	A	9/10/09				
75	X	Washington Learns, Findings and Recommendations				X	X	
76	X	Education Reform Funding, 5-12-04				X	X	
77	X	Policy and Budget Priorities: Keeping Our Promise To Students And Educators, 1-17-05				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	Π Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
78	X	E-mail from Priddy to Lieb dated 10-28-08, re Possible Tests				X	X	
79	X	E-mail from Priddy to Jones dated 11-29-06, re Emergency Fuel	A	9/10/09				
80	X	E-mail from Beard to Priddy dated 4-30-08, with attached NERC Analysis				X	X	
81	X	E-mail from Bylsma to Priddy dated 5-30-06, with attached Class Size graph				X	X	
82	X	E-mail from Beck to Priddy and others, dated 6-6-08, re Basic Ed Task Force				X	X	
83	X	E-mail from Crawford to Wirkkala and others, 9-28-07, with attached Draft NERC report	A	9/10/09				
84	X	E-mail from Priddy to Morrill, 9-5-08, with attached Cost of State Board of Health Rules				X	X	
85	X	Graphs: Districts Serving Poor Students Take Largest Reduction Per Student, and Non-LEA / LEA Districts Reductions				X	X	
86	X	Respondent's First Interrogatories & Second Document Requests				X	X	
87	X	Office of Superintendent of Public Instructions (OSPI) Report Card, 2007-2008, Chimacum SD				X	X	
88	X	OSPI Proposed Temporary "Fixes" for Pupil Transportation (2007-08 & 2008-09)				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
89	X		Wash. State Auditor's Office Accountability Audit Report, 3/11/08, Chimacum SD				X	X	
90	X		Wash. State Auditor's Office Financial Statements And Federal Single Audit Report, 9/1/06 – 8/31/07, Chimacum SD				X	X	
91	X		OSPI Report Cards, 2003-2008, Edmonds SD	A	9/30/09				
92	X		NEWS Subpoena Response, Funding Announcement, Form 1497s (Minimum Basic Educations Requirement Compliance), Edmonds SD	A	9/30/09				
93	X		NOT USED						
94	X		OSPI Report Cards, 2003-2008, Moses Lake SD	A	09/23/09				
95	X		OSPI Report Cards, 2003-2008, Moses Lake SD (incomplete)				X	X	
96	X		Amended Notice of 30(B)(6) Deposition of Wash. State Board for Community and Technical Colleges	A	10/20/09				
97	X		SBCTC Frequently Asked Questions	A	10/20/09				
98	X		Research report No. 07-2, Role of Pre-College (Developmental and Remedial) Education, December 2007	A	10/20/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
99	X		Research report No. 09-2, Access and Success for People of Color, March 2009	A	10/20/09				
100	X		SBCTC System Direction: Creating Opportunities for Washington's Future	A	10/20/09				
101	X		Research report No. 06-2, Building Pathways to Success for Low-Skill Adult Students, April 2005	A	10/20/09				
102	X		Amended notice of 30(b)(6) Deposition of Wash. Workforce Training & Education Coordinating Board	A	10/20/09				
103	X		Washington Learns: High Skills, High Wages: 2004	A	10/20/09				
104	X		11th and 12th Grades - Looking Ahead to the World Outside High School	A	10/20/09				
105	X		Secondary Career and Technical Education Works	A	10/20/09				
106	X		High Skills, High Wages, 2008-22018: Wash. Strategic Plan For Workforce Development	A	10/20/09				
107	X		Post-Secondary Career and Technical Education Works	A	10/20/09				
108	X		2007 Employers Workforce Needs and Practices Survey, Statewide Report	A	10/20/09				
109	X		Basic Education Financing and Workforce Development	A	10/20/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
110	X		Amended notice of Rule 30(b)(6) Deposition of State re Performance Audits of SDs				X	X	
111	X		Wash. State Auditor's Office Financial Statements And Federal Single Audit Report, 9/1/05 – 8/31/06, Edmonds SD	A	10/20/09				
112	X		Wash. State Auditor's Office Accountability Audit Report, 3-19-07, Edmonds SD	A	10/20/09				
113	X		2008 Annual Report to Citizens: The State of Audit	A	10/20/09				
114	X		Wash. State Auditor's Office Protocols, Issue Date: January 2009	A	10/20/09				
115	X		Auditor's Office Website printout: What Is An Audit?	A	10/20/09				
116	X		FAQs About Performance Audits Of State Government Entities	A	10/20/09				
117	X		An Agency Guide to Hosting a Performance Audit: Helpful Tips & Best Practices, 8-3-06	A	10/20/09				
118	X		OSPI Report Card, 2007-08, Issaquah SD	A	10/20/09				
119	X		OSPI Report Card, 2006-07, Issaquah SD	A	10/20/09				
120	X		OSPI Report Card, 2005-06, Issaquah SD	A	10/20/09				



Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
121	X		Issaquah SD, F-196 Annual Financial Statements 2007-2008	A	10/20/09				
122	X		Issaquah SD, F-196 Annual Financial Statements, 2006-2007	A	10/20/09				
123	X		State Funding Inequities Applied to Issaquah SD: Local Impact of a Statewide Problem	A	10/20/09				
124	X		Final Report of the Joint Task Force on Basic Education Finance, 1-14-09	A	9/8/09				
125	X		The Paramount Duty: Report of Wash. State Temporary Committee on Education Policies, Structure & Management, Jan. 1985	A	9/14/09				
126	X		The Paramount Duty, Part I: Interim Report of Temporary Committee on Educational Policies, Structure and Management	A	9/14/09				
127	X		Washington State Historical Society website pages: 2007 Annual Report	A	9/14/09				
128	X		House Resolution No. 2007-4624	A	9/14/09				
129	X		Engrossed Second Substitute Senate Bill 5627, Basic Education Funding, 5/9/07	A	9/8/09				
130	X		Final Bill Report, E2SSB 5627				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	Π Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
131	X	Engrossed Second Substitute Senate Bill 5441, Comprehensive Education Study Steering Committee, 7/24/05	A	9/8/09				
132	X	Final bill report, E2SSB 5441				X	X	
133	X	Engrossed Substitute House Bill 1209, Education Reform - Improvement Of Student Achievement, 7-25-93	A	9/8/09				
134	X	Final bill report, ESHB 1209				X	X	
135	X	E-mail from Grimm to task force members, 11-24-08, with correspondence from Full Funding Coalition re "grave concerns"	A	9/14/09				
136	X	E-mail from Heck to Grimm dated 3-12-08, re Book Club				X	X	
137	X	E-mail from Grimm to Lieb dated 12-18-08, Re Minority Report Redux				X	X	
138	X	E-mail from Grimm to Scarola dated 4-3-08, Re Potential Supp Salary Survey				X	X	
139	X	E-mail from Bcnored@aol.com to Grimm, dated 8-13-07, Re Bill Chance				X	X	
140	X	Basic Education Finance Joint Task Force Agendas & Minutes	A	9/14/09				

Cause No. 07-2-02323-2 SEA

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No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
141	X		OSPI Report Card, 2007-2008, Royal SD	A	10/20/09				
142	X		OSPI Report Card, 2003-2004, Royal SD	A	10/20/09				
143	X		Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/06 – 8/31/07, Royal SD				X	X	
144	X		Teaching and Learning, EALR, pages 1 and 2	A	8/31/09				
145	X		EALR - Educational Technology	[R]	10/20/09				
146	X		EALR - Health and Fitness	A	9/8/09				
147	X		EALR - The Arts	A	10/20/09				
148	X		Refined EALRs and EALR Components for Social Studies	[R]	10/20/09				
149	X		EALR - Communication	A	10/20/09				
150	X		EALR - Writing	A	10/20/09				
151	X		EALR - Science	A	10/20/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
152	X		EALR - Reading	A	10/20/09				
153	X		Immediate Action to Create Jobs Survey				X	X	
154	X		OSPI Report Card, 2007-08, Yakima SD,	A	9/15/09				
155	X		OSPI Report Card, 2003-04, Yakima SD	A	9/15/09				
156	X		Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/02 – 8/31/03, Mount Adams SD	A	09/23/09				
157	X		Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/05 – 8/31/06, Mount Adams SD	A	09/23/09				
158	X		Wash. State Auditor's Office, Financial Statements and Federal Single Audit Report, 9/1/06 – 8/31/07, Mount Adams SD	A	09/23/09				
159	X		Wash. State Auditor's Office, Accountability Report, 6/18/08, Mount Adams SD	A	09/23/09				
160	X		OSPI Report Card, 2007-08, Mt. Adams SD	A	09/23/09				
161	X		OSPI Report Card, 2003-2004, Mt. Adams SD	A	09/23/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
162	X		OSPI Report Card, 2007-08, Sunnyside SD 2007-08	A	10/20/09				
163	X		OSPI Report Card, 2003-2004, Sunnyside SD	A	10/20/09				
164	X		"All Students Can Learn" CD	A	10/20/09				
165	X		OSPI Report Card, 2007-08, Renton SD	A	09/23/09				
166	X		OSPI Report Card, 2006-2007, Renton SD	A	09/23/09				
167	X		OSPI Report Card, 2005-2006, Renton SD	A	09/23/09				
168	X		OSPI Report Card, 2007-08, Clover Park SD	A	10/20/09				
169	X		OSPI Report Card, 2006-2007, Clover Park SD	A	10/20/09				
170	X		OSPI Report Card, 2003-2004, Clover Park SD	A	10/20/09				
171	X		Photographs of deferred maintenance	A	10/20/09				
172	X		OSPI Report Card, 2003-04, Colville SD	A	10/20/09				

Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
173	X		OSPI Report Card, 2006-2007, Battle Ground SD	A	10/20/09				
174	X		OSPI Report Card, 2003-2004, Battle Ground SD	A	10/20/09				
175	X		What is the cost to educate one child per day? \$54.18	A	10/20/09				
176	X		OSPI Report Card, 2007-2008, Bethel SD	A	10/20/09				
177	X		OSPI Report Card, 2003-2004, Bethel SD	A	10/20/09				
178	X		OSPI Report Card, 2006-2007, Bethel SD	A	10/20/09				
179	X		OSPI Report Card, 2007-2008, Colville SD	A	9/3/09				
180	X		OSPI Report Card, 2006-2007, Colville SD	A	9/3/09				
181	X		OSPI Report Card, 2003-2004, Colville SD	A	9/3/09				
182	X		Photo of Colville Football Seniors '05 (in 2 parts)	A	9/2/09				
183	X		E-mail from Tom to Lieb dated 2-29-08, Re WASL questions and preliminary answers	A	10/20/09				



Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
184	X		E-mail from Tom to Grimm dated 8-31-07, re K-12 Task Force	A	10/20/09				
185	X		Basic Education Funding Proposal, October 1, 2008	A	10/20/09				
186	X		Senate Bill 5444, 2009 Regular Session	A	10/20/09				
187	X		House Bill 1410, 2009 Regular Session	A	10/20/09				
188	X		2008 Autumn Newsletter, Senator Rodney Tom	A	10/20/09				
189	X		Engrossed Substitute House Bill 2261, 2009 Regular Session	A	10/20/09				
190	X		Letter to Speakers and Members of House of Representatives from Governor Gregoire, dated 5-19-09	A	10/20/09				
191	X		A Citizen's Guide to the Washington State Budget, 2009	A	10/1/09				
192	X		A Citizen's Guide to the Washington State K-12 Finance, 2009	A	10/1/09				
193	X		E-mail from Jarrett to Yuan & others, dated 11-19-08, re Special Education Funding	A	10/20/09				
194	X		Senator Fred Jarrett Website: FAQ re Basic Education Task Force proposals	A	10/20/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	Π Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
195	X	Senator Fred Jarrett Website: E-mail re "Devastated at this News"	A	10/20/09				
196	X	Senator Fred Jarrett Website: E-mails re "Fear for our schools"	A	10/20/09				
197	X	Basic Ed Funding: A Model Schools Approach, January 2009	A	9/9/09				
198	X	Senator Fred Jarrett Website: E-mail re "Education task force recommendations"	A	10/20/09				
199	X	Cracking The "Constitutional Concrete": What Article IX Rulings Mean for Policymakers	A	10/20/09				
200	X	Report of the Capital Budget K-12 School Construction 2002 Interim Work Group	A	10/20/09				
201	X	News release: Opinion: State's paramount duty being shortchanged, 3-24-05	A	10/20/09				
202	X	News release: Statement from Rep. Anderson on Governor's WASL proposals, 12-15-05	A	10/20/09				
203	X	Washington Learns 2005 interim report	A	10/20/09				
204	X	News release: Math achievement testing delays don't help kids, 11-30-06	A	10/20/09				
205	X	Minority Report, Washington Learns Steering Committee, 11-13-06				X	X	

Cause No. 07-2-02323-2 SEA

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No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
206	X		Basic Education, a New Finance Model to Meet the Needs of Today's Students	A	9/8/09				
207	X		Basic Ed Funding: A Model School Approach, October 2008	A	10/20/09				
208	X		Seattle P-I article: State's future lies in educated kids, 1-16-08	A	10/20/09				
209	X		Preliminary Summary of Legislation Passed by State Legislature, 2009 Regular Session				X	X	
210	X		News release: Federal Way lawmaker crafts bill to fix school funding disparity, 1-16-08				X	X	
211	X		Washington State Operating Budget, Briefing Book, January 2009	A	9/9/09				
212	X		K-12 Policy and Finance Proposal, Representatives Priest, Jarrett, Cox, 8-3-06				X	X	
213	X		News release: Priest to serve on three education work groups, 7-10-07				X	X	
214	X		Opinion editorial: Sense of urgency should not be lost when solving the education funding debate, Rep. Priest, 9-14-07				X	X	
215	X		Report to Legislature: Findings and Recommendation of Building Bridges State-Level Workgroup on Dropout Prevention, Intervention and Retrieval, 12-1-08	A	9/8/09				

Cause No. 07-2-02323-2 SEA

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No.	Π Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
216	X	Memorandum to Task Force from Priest, 2-28-08, re BE Definition & Funding Formula	A	9/9/09				
217	X	Memorandum to Task Force from Priest, 4-9-08, re BE Finance Action Plan				X	X	
218	X	Basic Education Funding Proposal – The Highlights				X	X	
219	X	E-mail from Priest to Grimm dated 12-6-08, re Governor Gregoire's Letter				X	X	
220	X	Letter to Grimm from Governor Gregoire, dated 12-5-08				X	X	
221	X	News column: House education bill will pave the way for Washington's future, 2-17-09				X	X	
222	X	News release: Education reforms move forward, 3-13-09	A	9/9/09				
223	X	News release: House Bill 2261 is a vital first step in education reform, 5-7-09	A	9/9/09				
224	X	Education Research & Data Center: Key Education Indicators: A Compendium, 5/08				X	X	
225	X	P-20 Council Meeting Agenda, 9-11-08, with attached English-Language Learners	A	9/16/09				
226	X	Website of Wash. State Board of Education (SBE), Key Initiatives links, 6-1-09				X	X	

Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
227	X		Website of SBE: Common Questions, 5-19-09				X	X	
228	X		SBE: Meaningful HS Diploma	A	9/22/09				
229	X		Letter to Gov. Gregoire from Ryan, 9-2-08, with attached Draft SBE Strategic Plan				X	X	
230	X		Wash. State High School Graduation Requirements: How District Requirements Compare to the State Minimum Credit Requirements, June 2007	A	9/22/09				
231	X		SBE Strategic Plan, 2009-2015	A	9/16/09				
232	X		Opening Doors with CORE 24	A	9/16/09				
233	X		The New SBE: Working to Improve Student Achievement, 5-6-08	A	9/17/09				
234	X		E-mail from Grimm to Heck dated 5-6-08, Re K-12 Task Force				X	X	
235	X		The new SBE: Shaping CORE 24, 3-2-09	A	9/22/09				
236	X		Letter to Sen. McAuliffe from Ryan, dated 1-20-09, re Task Force	A	9/17/09				
237	X		Letter to Rep. Chopp from Ryan, dated 1-15-09, re Task Force	A	9/17/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
238	X		Seattle Times article by MJ Ryan: Wash. must redefine "basic education," 2-11-09	A	9/17/09				
239	X		Engrossed Substitute House Bill 2261, Education Generally, 2009 Regular Session	A	9/9/09				
240	X		E-mail from Denning to Lieb and Pennucci, dated 6-5-08 19, Re School Nutrition	A	10/20/09				
241	X		The Select Interim Legislative Task Force on Comprehensive School Health Reform, Final Report, December 2008	A	10/20/09				
242	X		Eliminate Reduced Price Lunch Co-Pay, KP	A	10/20/09				
243	X		WSNA School Breakfast and Lunch Funding 2007-'09, Revised 10-29-07	A	10/20/09				
244	X		Breakfast Funding Gap Projection as of 5-4-04				X	X	
245	X		Meals for Kids, Child Nutrition, 055, Budget Request	A	10/20/09				
246	X		ASB Small Schools Conference, WSAS March 2, 2009, OSPI Update	A	10/20/09				
247	X		Website Yelm.com, May 2006 archives	A	10/20/09				
248	X		Middle Level Strategies for School Improvement, a Report from the Wash. State Middle Level Task Force	A	10/20/09				



Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
249	X		EALRs, The Arts	A	10/20/09				
250	X		EALR, Health and Fitness	A	10/20/09				
251	X		Superintendent's Column - April 2008: Spring Time Brings Performing Arts to Center Stage	A	10/20/09				
252	X		Involvement in the Arts and Human Development: General and Intensive Involvement in Music & Theater Arts	[R]	10/20/09				
253	X		Participation in Extracurricular Activities in the Middle School Years: Are There Developmental Benefits for African American and European American youth?	[R]	10/20/09				
254	X		Curriculum Vitae, David T. Conley				X	X	
255	X		Washington Adequacy Funding Study, January 2007				X	X	
256	X		Curriculum Vitae, James S. Catterall				X	X	
257	X		Inside Out's School Project				X	X	
258	X		Chicago Arts Partnerships in Education, Summary Evaluation				X	X	

Cause No. 07-2-02323-2 SEA

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No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
259	X		Journal for Learning through the Arts: Conversation and Silence: Transfer of Learning Through the Arts				X	X	
260	X		Notice of 30(b)(6) Deposition of Joint Task Force on School Construction Funding	A	10/20/09				
261	X		Joint Legislative Task Force on School Construction Funding, Final Report	A	9/10/09				
262	X		Joint Legislative Task Force on School Construction Funding, interim report, 8/28/07	A	9/10/09				
263	X		The 2 Percent Rule, 7/16/08	A	9/10/09				
264	X		State Assistance for School Construction, A Case Study: Evergreen SD Union HS	A	10/20/09				
265	X		What is the Problem? Task Force on School Construction, 7/16/08	A	10/20/09				
266	X		E-mail from Beck to Priddy and Mannix, 6-6-08, with attached info re Maintenance	A	9/10/09				
267	X		E-mail from Aos to Moore & Pennucci, dated 11-9-07, re "spending too much on fancy school buildings"	A	10/20/09				
268	X		Update on Work of the Task Force on Basic Education Finance, 5-14-08				X	X	

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
269	X		How Do Washington's Graduation Tests Measure Up? A Comparison of the 2003 10th Grade WASL with High School Graduation Exams from Other States	A	9/17/09				
270	X		High School Graduation Rates in Wash. and the U.S.: A Long-Run View, March 2005	A	9/17/09				
271	X		Study design: Benefits & Costs Of K-12 Educational Programs & Services, Sep. 2006	A	9/17/09				
272	X		Benefits & Costs of K-12 Educational Policies: Evidence-based Effects of Class Size Reductions & Full-Day Kindergarten, March 2007	A	9/17/09				
273	X		Basic Education Finance: Initial Report to the Joint Task Force, Revised October 2007	A	9/17/09				
274	X		Report to Joint Task Force on Basic Ed Finance: School Employee Compensation & Student Outcomes, December 2007	A	9/17/09				
275	X		Preliminary Review of Research: Does Teacher Professional Development Affect Student Test Scores? August 2008	A	9/17/09				
276	X		September 15, 2008 Report to Joint Task Force on Basic Ed Finance, Sep. 2008	A	9/17/09				
277	X		Benefits & Costs of Evidence-Based Prevention & Intervention, 4/18/08	A	9/17/09				

Cause No. 07-2-02323-2 SEA

Caption: Mathew and Stephanie McCleary, et al. vs. State of Washington

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
278	X		E-mail from Aos to Papke dated 8-9-07, re A Question				X	X	
279	X		E-mail from Aos to Grimm dated 11-21-07, re Follow to Goals Memo	A	9/17/09				
280	X		Memorandum to House Education Committee from McLain, 11-16-07, re Basic Ed Goals Revision	A	9/17/09				
281	X		K-12 Finance & Student Outcomes: A 5,000' Flyover & Proposed Research Approach, 9-10-07	A	9/17/09				
282	X		K-12 Finance & Student Outcomes, Research Update, 11-20-07	A	9/17/09				
283	X		E-mail from Aos to Grimm and others, dated 12-11-08, re Additional Outcomes of Task Force Proposal	A	9/17/09				
284	X		Current State K-12 Budget Drivers: Key Trends & Tradeoffs, 5-6-08	A	9/17/09				
285	X		Update on the Work of the Joint Task Force on Basic Education Finance, with notations				X	X	
286	X		Projecting the Effect (On Student Outcomes) of Task Force Recommendations, 9-15-08				X	X	
287	X		Early Childhood Education & Full-Day Kindergarten, Effects on K-12 Outcomes, 10-21-08	A	9/17/09				

Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
288	X		Two-year Cost Estimates for the Draft Proposal of the Basic Education Finance Joint Task Force, 12/18/08	A	9/17/09				
289	X		Projections of the "Expected Effect of the Investment" on Student Outcomes, The Task Force's Draft Portfolio & a Zero-Based Portfolio, 12-8-08				X	X	
290	X		E-mail from Aos to Grimm dated 1-23-08, re Senate hearing Thursday				X	X	
291	X		Notice of 30(b)(6) Deposition / African American Achievement Gap Study	A	9/9/09				
292	X		Second Substitute House Bill 2272, 2/7/09 Achievement Gap - African American Students, 6/12/08	A	9/21/09				
293	X		Final report - A Plan to Close the Achievement Gap for African-American Students, December 2008	A	9/9/09				
294	X		Imagine ... Academic Success for All African-American Students, Final Report of HB 2722				X	X	
295	X		Second Substitute Senate Bill 5973, 2009 Regular Session	A	9/21/09				
296	X		Notice of rule 30(b)(6) deposition/Latino Students Achievement Gap Study	A	10/20/09				
297	X		Understanding Opportunities to Learn for Latino Students in the State of Washington	A	10/20/09				

Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
298	X		Engrossed Substitute House Bill 2687, pages 55 and 56	A	10/20/09				
299	X		Notice of rule 30(b)(6) Deposition /Pacific Islanders Achievement Gap Study				X	X	
300	X		Report: Growing Presence, Emerging Voices: Pacific Islanders & Academic Achievement in Washington				X	X	
301	X		Engrossed Substitute House Bill 2687, pages 21 and 22				X	X	
302	X		Growing Presence, Emerging Voices: Pacific Islanders & Academic Achievement				X	X	
303	X		Notice of rule 30(b)(6) Deposition /Asian American Achievement Gap Study				X	X	-
304	X		Report: Asian Americans in Wash. State: Closing Their Hidden Achievement Gaps				X	X	
305	X		Asian Americans in Wash. St.: Closing Their Hidden Achievement Gaps				X	X	
306	X		Asian Americans in Wash. State: Closing Their Hidden Achievement Gaps, Executive Summary				X	X	
307	X		Curriculum Vitae, Jennifer Fredricks, Ph.D.				X	X	
308	X		EALR - Health and Fitness				X	X	



Cause No. 07-2-02323-2 SEA

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No.	II	Δ	Description	A AN R	Date	Re-O & A	I D	R e t	EXHIBIT ROOM USE ONLY
309	X		Learning to Play and Playing to Learn				X	X	
310	X		Developmental Benefits of Extracurricular Involvement: Do Peer Characteristics Mediate the Link Between Activities & Youth Outcomes?				X	X	
311	X		Is Extracurricular Participation Associated With Beneficial Outcomes? Concurrent & Longitudinal Relations				X	X	
312	X		Extracurricular Involvement and Adolescent Adjustment: Impact of Duration, Number of Activities & Breadth of Participation				X	X	
313	X		Participation in Extracurricular Activities in the Middle School Years: Are There Developmental Benefits for African American and European American youth?				X	X	
314	X		Curriculum Vitae, Lawrence J. Schweinhart				X	X	
315	X		Educational and Economic Benefits of Preschool Education, ETS Policy Forum Conference, 3/3/09				X	X	
316	X		Curriculum Vitae, Roger Soder	A	9/15/09				
317	X		SBE Form 1497 Minimum Basic Education Requirement Compliance (blank form)	A	9/17/09				